

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRACY L. ROSS,

Claimant,

vs.

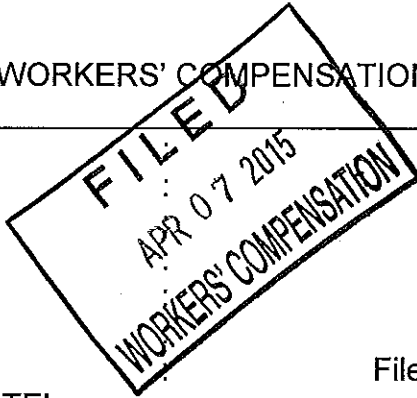
DES MOINES MARRIOTT HOTEL,

Employer,

and

MARRIOTT CLAIMS SERVICE,

Insurance Carrier,
Defendants.



File No. 5050203

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. Claimant, Tracy Ross, sustained a stipulated work injury in the employ of defendant Des Moines Marriott Hotel on January 2, 2014. She now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call on April 6, 2015. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. Claimant's exhibit 1 was received into the record. By standing order of the workers' compensation commissioner the undersigned was delegated authority to issue final agency action in the matter.

ISSUE

The issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by Des Moines Marriott Hotel on January 2, 2014 when she suffered a work injury. A petition for alternative medical care was filed on March 25, 2015 asking for pain management, as recommended by

Jacqueline Stoken, D.O., in Exhibit 1. No prior notice of dissatisfaction was communicated to the employer.

CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997), the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

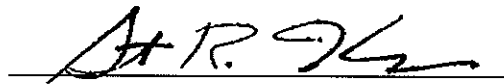
The claimant did not express dissatisfaction with the care provided prior to the filing of the alternative medical care petition. The claimant therefore has not met the requirement of Iowa Code section 85.27 for alternate medical care at this time.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is denied.

Signed and filed this 7th day of April, 2015.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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