BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL CROWE, Claimant, vs. HAWKEYE MOVERS OF DAVENPORT IOWA, INC., Employer, and UNKNOWN, Insurance Carrier, Defendants.	FILED MAY 12 2017 WORKERS' COMPENSATION File No. 5063595 ALTERNATE MEDICAL CARE DECISION Head Note No.: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Michael Crowe.

This alternate medical care claim came on for hearing on May 11, 2017. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be by a petition for judicial review under Iowa Code section 17A.19.

The claimant properly served notice of this petition for alternate medical care on the defendant employer, and defendant's third party administrator (TPA) by certified mail. The claimant's attorney made a professional statement that he received a return receipt of service of the petition and original notice indicating defendant employer and the TPA received those documents on May 1, 2017. Claimant's counsel indicated he had not been contacted by anyone on behalf of the employer or any insurance carrier in regards to this petition.

No answer to the petition for alternate medical care was filed by the employer or any insurance carrier or attorney representing the employer. A copy of the return receipt of service of the petition and original notice indicate defendant employer and the TPA received those documents on March 1, 2017. (Exhibit 2)

The undersigned examined the file for this petition and there is no answer from the employer or its insurance carrier on file. There is no indication that anyone representing the employer or its insurance carrier called in to the agency to provide a phone number to be called during the hearing. The file does not show that this agency's notice of the hearing, sent to the employer and requesting a phone number to be called was returned as undelivered. No phone calls were received by the agency during the hearing inquiring why the employer was not called at the time designated for the hearing.

Thus, a finding was made that the claimant had properly served notice of the petition for alternate medical care on the defendant employer; that the employer had not filed an answer or otherwise appeared; and that the employer had not provided this agency with a phone number or person to be contacted for its participation in the hearing. The employer was found to be in default for purposes of this alternate medical care proceeding, and the employer is found to have abandoned the care of the claimant by its refusal to respond to claimant regarding further treatment, or participate in this alternate medical care proceeding.

The record in this case consists of claimant's exhibits 1 through 2, and the testimony of claimant. Defendants did not participate in the hearing.

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of treatment for claimant's symptoms by a company doctor.

FINDINGS OF FACT

Claimant testified he worked for defendant employer Hawkeye Movers (Hawkeye). Claimant said he was moving furniture from Iowa to Virginia while working for Hawkeye. On May 13, 2016, claimant was injured while working for Hawkeye when a tool cabinet fell on him. Claimant estimated the tool cabinet weighed between 200 to 300 pounds. Claimant said the accident fractured his nose, lacerated his eyelid and caused pain and stiffness in his shoulder and back.

Claimant was eventually treated by a plastic surgeon for his injuries. The plastic surgeon set his nose and stitched the laceration on his eyelid.

Claimant testified he told his supervisor, Chuck VanderHart, of the injury on the date of the injury, May 13, 2016. Mr. VanderHart's name appears on the return receipt card indicating he personally received the alternate medical care petition in this matter by certified mail (Ex. 2)

Claimant testified that after he received treatment from the plastic surgeon, he has not received any other care. Claimant said he went on his own to a walk-in clinic to have stitches removed and to have care for his back and shoulder.

Claimant testified he has ongoing migraine headaches, difficulty with breathing through one of his nostrils, difficulty with sleeping due to troubles with breathing, and shoulder and back pain. He testified he communicated with Mr. VanderHart regarding getting care for his symptoms, but Hawkeye has not offered claimant any further care.

When Hawkeye failed to provide care to claimant, claimant's attorney wrote defendant's TPA a letter, dated April 20, 2017, requesting defendant provide further care for claimant's symptoms. That letter was sent and received by facsimile by defendant TPA on April 20, 2017. (Ex. 1)

In a professional statement, claimant's counsel indicated his office contacted the TPA and found the TPA has a claim number and a claim's person assigned to the injury of May 13, 2016. Claimant's counsel indicated he has not received any communication from defendant or the TPA concerning further care for claimant.

Defendant did not participate in this hearing. As a result there is no contrary evidence.

CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

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 Rule of Appellate Procedure 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.

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

Claimant has contacted his employer requesting further care for his work injury. Defendant did not offer any care. Claimant's counsel sent defendant's TPA a letter requesting care for claimant's ongoing symptoms. There has been no response to that letter. Both defendant Hawkeye and the TPA received the alternate medical care petition in this matter. Defendant Hawkeye did not file an answer, did not respond to the petition, and failed to appear at hearing.

Defendant has not communicated with the claimant or his attorney regarding claimant's requests for continued care. Defendant did not participate in the hearing on this alternate medical care petition. Based on this, it is found defendant has abandoned the claimant's care. There is evidence indicating the treatment provided by defendant was not appropriate or adequate. Claimant seeks treatment that is appropriate for his injury. The petition for alternate medical care is granted.

ORDER

THEREFORE, IT IS ORDERED:

The claimant's petition for alternate medical care is granted. Defendant shall furnish claimant care consisting of authorization of a doctor to treat claimant's ongoing symptoms of headaches, problems with breathing, and shoulder and back pain.

Signed and filed this 12th day of May, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/kjw