

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

DAN LAURIE,  
Claimant,

vs.

AGRILAND FS,  
Employer,

and

EMC INSURANCE COMPANY,  
Insurance Carrier,  
Defendants.

**FILED**  
FEB 14 2019  
WORKERS' COMPENSATION

File No. 5061458

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. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Dan Laurie. Claimant appeared personally and through his attorney, David Drake. Defendants appeared through their attorney, Kent Smith.

The alternate medical care claim came on for hearing on February 12, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

No witnesses testified at the hearing. Claimant offered exhibit 1 which consists of 4 pages. Defendants offered defendants' exhibits 1 and 2 which consist of 3 pages. There were no objections to any of the exhibits; the exhibits were admitted into evidence. During the course of the hearing defendants accepted liability for the right knee and injury date of December 5, 2012.

## ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

## FINDINGS OF FACT

Claimant, Dan Laurie, sustained a work-related injury to his right knee on December 5, 2012. This is the fifth petition for alternate care filed by Mr. Laurie. The history of this case is set forth in my January 23, 2019 alternate medical care consent order and will not be completely reiterated herein.

As the result of the first petition for alternate medical care, the parties reached an agreement which was set forth in the July 10, 2018 consent order which stated that the defendants would have an additional two weeks to schedule an appointment for the claimant to see a qualified orthopaedic surgeon who would provide treatment to the claimant. Unfortunately, this did not occur so claimant filed a second petition for alternate medical care. On October 3, 2018, claimant's petition was granted and defendants were ordered to authorize an orthopaedic surgeon to provide treatment for the claimant. To date, defendants still have not provided claimant with an orthopaedic surgeon who will see him for treatment purposes. Claimant is seeking an order allowing him to seek treatment with an orthopaedic surgeon of his choice.

Prior to the last alternate care proceeding, defendants sent claimant's counsel a letter stating Dr. Mysnyk at the Steindler Clinic in Iowa City had agreed to become the authorized treating physician for his right knee injury. An appointment was set for January 28, 2019 at 3:00 p.m. Mr. Laurie agreed to attend this appointment. However, after Mr. Laurie had traveled to Dr. Mysnyk's office for the appointment, he learned that the doctor would not see him for treatment. (Claimant's Exhibit 1, page 4) There is no evidence in the record to indicate why Dr. Mysnyk refused to see the claimant for treatment.

The pending petition for alternate medical care was filed on January 31, 2019. Defendants have scheduled an appointment for Mr. Laurie to see Daniel C. Miller, D.O. on February 18, 2019. Dr. Miller is an occupational medicine physician, not an orthopaedic surgeon. Given the facts of this case, I find defendants' offer of care is not reasonable. Back in June of 2018 defendants agreed to send Mr. Laurie for treatment with an orthopedic surgeon; this agreement is memorialized in the June consent order. Further, in the October 2018 alternate care decision defendants were ordered to authorize an orthopaedic surgeon to provide treatment to Mr. Laurie. Yet, Mr. Laurie still has not seen an orthopaedic surgeon for treatment. The orthopaedic surgeons that defendants have sent him to since June have been for evaluations or second opinions, not treatment. Based on the evidence in the record, I find that the treatment currently being offered by defendants is not prompt, nor is it reasonable.

## REASONING AND 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., 562 N.W.2d at 433, 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 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).

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 Decision June 17, 1986).

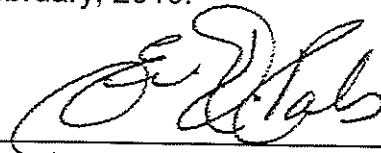
Based on the above findings of fact, I find that claimant's petition for alternate medical care is granted. In June of 2018 defendants agreed to send Mr. Laurie to an orthopaedic surgeon for treatment of his right knee. As part of that consent order claimant stated he was willing to travel a farther distance than what is typical in workers' compensation cases to receive treatment from an orthopedic surgeon. There simply is a lack of evidence in the record to show that defendants have provided an orthopaedic surgeon to provide reasonable and necessary treatment to Mr. Laurie for his work injury.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is granted. Claimant may seek reasonable and necessary treatment with an orthopaedic surgeon of his choice for his right knee injury. Defendants shall be responsible for the reasonable and necessary treatment pursuant to Iowa Code section 85.27.

Signed and filed this 14<sup>th</sup> day of February, 2019.



ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies To:

David D. Drake  
Attorney at Law  
1415 Grand Ave.  
West Des Moines, IA 50265  
[ddrake@lidd.net](mailto:ddrake@lidd.net)

Kent M. Smith  
Attorney at Law  
1225 Jordan Creek Pkwy., Ste. 108  
West Des Moines, IA 50266  
[ksmith@smithmillslaw.com](mailto:ksmith@smithmillslaw.com)

EQP/sam