BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN ARNZEN, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.	FILED NOV 07 2018 WORKERS COMPENSATION	File No. 5062268 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, John Arnzen. Claimant did not personally appear but instead appeared through his attorney, Matthew Sahag. Defendant appeared through its attorney, Jason Wiltfang.

The alternate medical care claim came on for hearing on November 6, 2018. 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.

The record consists of Claimant's Exhibit 1 and Defendant's Exhibits A and B. No witnesses were called. Counsel offered oral arguments to support their positions.

ISSUE

The issue presented for resolution is whether the claimant is entitled to payment or reimbursement for the left carpal tunnel surgery performed by Joseph A. Buckwalter, IV, M.D., and authorization of future follow-up appointments with Dr. Buckwalter.

FINDINGS OF FACT

The undersigned, having considered all of the testimony and evidence in the record, finds:

This case originally proceeded to hearing in arbitration on January 25, 2018 to determine, in part, whether claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment. Prior to hearing, claimant sought treatment with Rick

Wilkerson, D.O. In his August 31, 2016 treatment note, Dr. Wilkerson recommended surgery on claimant's left upper extremity. (Claimant's Exhibit 1, page 3) That surgery was not authorized, however, because defendant, relying on the opinion of Douglas Martin, M.D., disputed the causal relationship between claimant's condition and his work activities.

On June 19, 2018, a deputy workers' compensation commissioner issued an arbitration decision in which he determined claimant sustained a bilateral carpal tunnel injury that arose out of and in the course of his employment with defendant-employer. Based on this decision, defendants now accept liability for claimant's bilateral carpal tunnel syndrome for which claimant currently seeks alternate medical care.

However, claimant's entitlement to future medical care was not specifically addressed in the arbitration decision, and no authorized treating physician was identified by defendant after the arbitration decision was issued. Instead, claimant began treating on his own with Dr. Buckwalter. Claimant's attorney acknowledged at hearing that claimant never sought authorization for treatment with Dr. Buckwalter prior to October 16, 2018.

On October 16, 2018, claimant's counsel sent an e-mail to defendant's then-counsel notifying him of claimant's left carpal tunnel surgery to be performed by Dr. Buckwalter on October 24, 2018. (Defendant's Ex. A, p. 2) Claimant's counsel requested authorization of the surgery. (Def. Ex. A, p. 2)

On October 24, 2018, defendant's counsel informed claimant's counsel that defendant would not authorize the procedure because Dr. Buckwalter was not an authorized treating physician. (Def. Ex. A, p. 1) I find Dr. Buckwalter has not been and is not currently an authorized treating physician.

In a subsequent e-mail on October 24, 2018, claimant's counsel expressed dissatisfaction with defendant's position, and claimant's petition for alternate medical care was filed the same day. (Def. Ex. A, p. 1)

On November 1, 2018, defendant notified claimant that it authorized and scheduled an appointment with Yorell Manon-Matos, M.D., for November 20, 2018. (Def. Ex. B)

During the course of the hearing before the undersigned, claimant's counsel clarified that claimant has actually already undergone the left carpal tunnel surgery that was scheduled with Dr. Buckwalter. This was not known by defendant's counsel prior to the hearing.

Given the fact that claimant's surgery has already been performed, claimant no longer seeks authorization for a future surgery through his petition for alternate medical care; claimant instead seeks payment or reimbursement for the surgery. Claimant also seeks an order requiring defendants to authorize claimant's follow-up appointments with Dr. Buckwalter.

With respect to claimant's request for authorization for future treatment with Dr. Buckwalter, I understand claimant's desire to continue treatment with the doctor who performed his surgery. However, claimant took a risk by pursuing unauthorized surgery. Importantly, claimant's counsel failed to articulate in what way defendant's authorization of Dr. Manon-Matos is unreasonable. Claimant's counsel was not critical of Dr. Manon-Matos' credentials, for example, nor was there any assertion that Dr. Manon-Matos is not reasonably suited to treat claimant's condition. Instead, claimant's counsel's only misgiving with Dr. Manon-Matos was that it introduces another doctor into claimant's treatment scheme. For these reasons, I find treatment with Dr. Manon-Matos is reasonable.

Regarding claimant's request for payment or reimbursement of the surgery performed by Dr. Buckwalter, I find that an alternate medical care proceeding is not the appropriate vehicle for payment or reimbursement for past medical expenses.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the 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.

Iowa Code § 85.27(4).

In Bell Bros. Heating and Air Conditioning v. Gwinn, the Iowa Supreme Court explained:

> [T]he employer has no right to choose the medical care when compensability is contested. . . . If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.

779 N.W.2d 193, 204 (Iowa 2010). Thus, once liability is established through an arbitration decision, the employer's burden to provide care also permits the employer to exercise its statutory right to select the necessary medical care (unless ordered otherwise), and the employee again bears the burden to establish that the care offered

by the employer is not reasonable. Iowa Code section 85.27(4); Gwinn, 779 N.W.2d at 206 ("[T]he statute only requires the employer to furnish reasonable medical care.").

Defendant's "obligation under the statute is confined to *reasonable* care for the diagnosis and treatment of work-related injuries." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (emphasis in original). In other words, the "obligation under the statute turns on the question of reasonable necessity, not desirability." Id.

Similarly, an application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. See Iowa Code § 85.27(4). Thus, 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, 528 N.W.2d at 124.

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123.

While I appreciate claimant's eagerness to obtain a surgery that was recommended as early as August of 2016 and his desire to continue treatment with the doctor that performed the surgery, Dr. Buckwalter was not an authorized treating physician and the surgery performed by Dr. Buckwalter was likewise not authorized. As I mentioned, claimant took a risk by pursuing an unauthorized surgery. Defendant is now unwilling to authorize future treatment with Dr. Buckwalter and has instead scheduled an appointment with Dr. Manon-Matos.

In this context, I found defendant's authorization of Dr. Manon-Matos to be reasonable. Based on this finding, I conclude claimant failed to carry his burden to prove he is entitled to alternate medical care in the form of ongoing treatment with Dr. Buckwalter.

Turning to claimant's request for payment of or reimbursement for the surgery performed by Dr. Buckwalter, I conclude alternate medical care proceedings are a vehicle only for *prospective* relief. As routinely stated by this agency, a decision in an alternate medical care proceeding operates prospectively only, not retroactively. The claimant's application for alternate care should be dismissed without prejudice when the claimant seeks payment for medical care that had been provided prior to the time the alternate medical care petition was filed. Moline v. Nordstrom, File No. 1273226 (December 21, 2000); Donisi v. Norrell Services, File No. 1276161 (August 8, 2000); Mobayed v. AMS Services, Inc., File No. 1168048 (May 20, 1997); and Massie v. Madison Avenue Dairy Queen, File No. 1055168 (November 3, 1995).

Consequently, the portion of the claimant's petition seeking payment or reimbursement for Dr. Buckwalter's surgery is dismissed without prejudice. There are other mechanisms available to obtain payment of these expenses.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied and dismissed with regard to past medical expenses.

Claimant's request for authorization of Dr. Buckwalter is also denied. However, defendants are ordered to promptly provide the treatment recommended by the authorized providers.

Signed and filed this 7th day of November, 2018.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Matthew M. Sahag
Attorney at Law
301 E. Walnut St., Ste. 1
Des Moines, IA 50309
matthew@dickeycampbell.com

James L. Drury, II
Attorney at Law
800 Stevens Port Dr., Ste. DD713
Dakota Dunes, SD 57049-5005
jamey.drury@tyson.com

SJC/srs