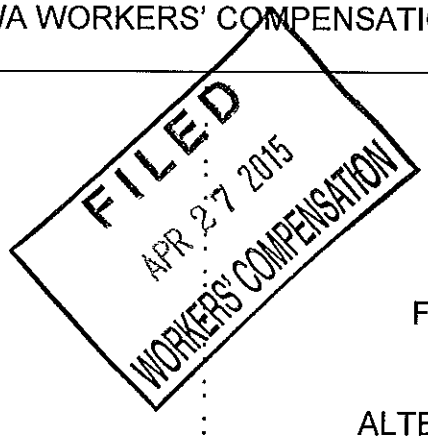
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CAROLYN BRANDAU,

Claimant,

vs.

EXPRESS EMPLOYMENT PROFESSIONALS,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5051958

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 sustained a stipulated work injury in the employ of defendant Express Employment Professionals on October 23, 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 27, 2015. The record consists of claimant's exhibits A-B, defendants' exhibits C and D-G. The entire hearing was recorded via digital tape, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner the undersigned was delegated authority to issue final agency action in the matter.

ISSUES

Liability is admitted on this claim. The sole 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 Express Employment Professionals on October 23, 2014 when she suffered a stipulated injury arising out and in the course of

employment to her neck. The defendants sent the claimant to D. W. Beck, M.D. for treatment. Dr. Beck has recommended an anterior cervical decompression and fusion at C6-7. (Exhibit A) He has also recommended a cervical collar. (Ex. A and Ex. G, p. 2) Claimant desires the surgery. What is not clear is if Dr. Beck believes the surgery is required for the work injury or other reasons. (Ex. A)

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 has the burden of proving that the care authorized by the defendants is unreasonable or ineffective, or unduly inconvenient. The medical treatment offered by the defendants is by Dr. Beck. It is not clear from this record if the surgery is recommended because of the work injury or not. Neither party clarified this with the doctor. If Dr. Beck is recommending the surgery because of the work injury they are to provide the surgery.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is granted as described above.

Signed and filed this 27th day of April, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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