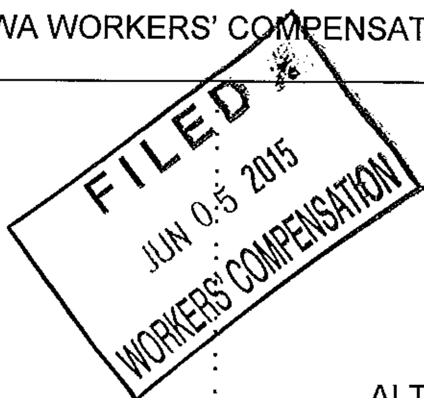
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



ROGER L. LIDDICK, Claimant,	
vs.	File No. 5052583
CAMPING WORLD, Employer,	ALTERNATE MEDICAL CARE DECISION
and	
UNKNOWN, Insurance Carrier, Defendants.	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, Camping World, on approximately September 25, 2014. He 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 and fully submitted on June 5, 2015. The entire hearing was recorded via audio 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 proceeding.

ISSUE

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 Camping World on about September 25, 2014, when he suffered an injury which the parties stipulate arose out of and in the course of employment.

The claimant now seeks treatment with Leslie C. Hellbusch, M.D., Clinical Professor of Surgery, Neurosurgeon. The defendants have been providing ongoing

treatment and are arranging treatment for the neurological complaints. No treatment recommended has been denied. Claimant argues that for invasive surgery he should get to choose his surgeon, as his preference should be given significant weight.

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, 526 2 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 has not been effective in treating his injury.

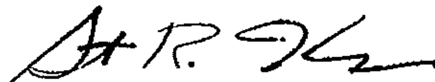
The claimant seeks to pick his own doctor, but the defendants have the right under Iowa law to select. The defendants are providing care, and the claimant did not meet his burden of establishing that the care provided is ineffective or inferior to the care offered.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is denied at this time with the understanding that care will be PROMPTLY provided.

Signed and filed this 5th day of June, 2015.



STAN MCELDERRY
DEPUTY WORKERS'
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