BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN BOTKIN,

Claimant,

vs.

HARRIS STEEL GROUP, INC.,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

File No. 5063538

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. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1).

Claimant appeared through his attorney, Tom Currie. Defendants appeared through their attorney, Brian Scieszinski.

The alternate medical care claim came on for hearing on April 20, 2018 at 10:30 a.m. The proceedings were digitally recorded. The recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation Commissioner's 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 exhibits 1 through 4 and defendants' exhibits A and B. Claimant testified on his own behalf.

The parties admitted claimant sustained a work-related injury to his right shoulder on June 18, 2015. Claimant is right hand dominant.

On November 3, 2015, Tuvi Mendel, M.D., performed the following surgical procedures on claimant's right shoulder:

1. Right shoulder arthroscopic glenohumeral joint labral debridement and synovectomy.
2. Right shoulder arthroscopic subacromial decompression.
3. Right shoulder arthroscopic acromioclavicular joint resection.

(Exhibit 1, page 1)

Claimant engaged in follow up care with Dr. Mendel. He continued to complain of pain in the right shoulder. (Ex. 2, p. 2) Claimant had a right shoulder injection on October 24, 2016. (Ex. 2, p. 3)

Claimant desired to return to Dr. Mendel during the latter part of 2017. However, Dr. Mendel would not examine claimant without authorization from defendants. Counsel for claimant requested authorization on several occasions from defendants. Claimant wanted to return to see Dr. Mendel. No authorization was forthcoming. Instead, defendants desired claimant to travel to West Des Moines for an examination pursuant to Iowa Code section 85.39 with J. Joe Hawk, M.D. The examination did not occur.

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 1975).

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 employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

In the instant case, Dr. Mendel is the authorized treating physician. No other medical provider has been authorized. Defendants are not allowed to interfere with the treatment practices of the authorized treating attorney.

Claimant is requesting reasonable medical treatment. He wants to return to Dr. Mendel, the surgeon who performed surgery on claimant's right shoulder. Defendants shall authorize claimant to continue treatment with Dr. Mendel. Defendants shall schedule the appointment within ten (10) days of the filing of this decision.

ORDER

IT IS THEREFORE ORDERED:

Within ten (10) days of the filing of this order, defendants shall schedule an appointment for claimant with Tuvi Mendel, M.D.

Signed and filed this 23rd day of April, 2018.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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