

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHELLE BREITBACH,

Claimant,

vs.

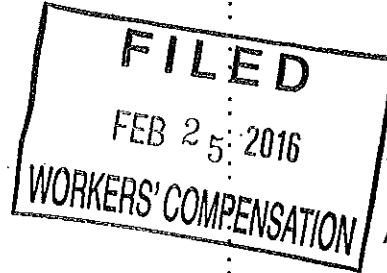
SEDONA STAFFING,

Employer,

and

ACE PROPERTY AND CASUALTY
COMPANIES,

Insurance Carrier,
Defendants.



File No. 5054061

ALTERNATE MEDICAL

CARE DECISION

AND CONSENT ORDER

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, Michelle Breitbach. Claimant appeared personally and through attorney, Paul McAndrew. Defendants appeared through their attorney, Peter Thill.

The alternate medical care claim came on for hearing on February 25, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's 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.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care. Claimant seeks an order compelling defendants to authorize and pay for shoulder treatment through Richard Kreiter, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:
During opening statements, the parties found some common ground and the parties agreed to a brief recess to discuss the matter further. Ten minutes later,

claimant's counsel contacted the undersigned and informed the agency of a resolution. The parties have agreed to return the claimant directly to her treating orthopedist, Dr. Schemmel for shoulder treatment. This is a good resolution of this case.

REASONING AND 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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See 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).

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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).


The parties have resolved this matter and agreed to reasonable medical care.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is DISMISSED without prejudice. The defendants have consented to authorize a return appointment directly with Dr. Schemmel.

Signed and filed this 25th day of February, 2016.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Paul J. McAndrew, Jr.
Attorney at Law
2771 Oakdale Blvd., Ste. 6
Coralville, IA 52241
paulm@paulmcandrew.com

Peter J. Thill
Attorney at Law
1900 54th St.
Davenport, IA 52807
pjt@bettylawfirm.com

JLW/kjw