BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL MOORMAN,

Claimant,

vs.

DÉCOR CABINETS,

Employer,

and

AMERICAN FAMILY INSURANCE,

Insurance Carrier,
Defendants.

File No. 5052285

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 physical injuries in the employ of defendant Décor Cabinets. 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 March 3, 2016. 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 proceeding.

ISSUE

Liability is admitted on this claim. The sole issue presented for resolution is whether or not the claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by Décor Cabinets when he suffered injuries arising out of and in the course of employment November 1, 2012. Defendants had authorized care which included cervical surgery, and then pain management with Dr. Christian Ledet in Des Moines, Iowa. Dr. Ledet has recommended a spinal cord stimulator. The defendants have instead attempted to move care to Dr. Rahul Rastogi at the Work Injury Recovery Center in Iowa City, Iowa. The claimant lives in Mystic, Iowa in Appanoose County Iowa approximately 80 miles and 90 minutes from Des Moines,

Iowa, and approximately 140 miles and 2-1/2 to perhaps 3 hours from Iowa City. An extra 2 hours or more round trip is not reasonable for medical care available by multiple providers much closer to claimant.

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.

Care should be provided within a reasonable distance from claimant's residence. Trade Professionals, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003) (more than 100 miles and 3 hours driving time is an undue inconvenience to the injured worker); Schrock v. Corkery Waste Disposal, Inc. File No. 1133725, Alt Care Decision 6/26/96 (120 mile round trip excessive); Cordero v. Florilli Corp., File No. 1084577, Alt Care Decision 9/5/96 (care ordered within 50 mile radius of claimant's home); Schulte v. Vocational Services of Area Residential Care, File No. 1134342, Alt Care Decision 9/6/96 (care more than 70 miles away unreasonable).

The defendants are not following the recommendations of their own doctor as to a spinal stimulator and now want to move care to a location that is a 5 hour or more round trip without a plan that is in the record of how that would improve claimant's condition. If the defendants are dissatisfied with Dr. Ledet there are other options in Des Moines. In the case before us, claimant has met his burden, and it was found as a matter of fact that the defendants are not providing care without undue delay or inconvenience to the employee.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is granted including continued care with Dr. Ledet and a spinal stimulator.

Signed and filed this 4th day of March, 2016.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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