BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN LENTH Claimant, vs. UNITED FARMERS COOPERATIVE, Employer, and DAKOTA TRUCK UNDERWRITERS, Insurance Carrier, Defendants.	File No. 22701235.01 ALTERNATE MEDICAL CARE DECISION Headnote: 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, Kevin Lenth. Claimant appeared personally and through his attorney, James Ballard. Defendants appeared through their attorney, Caroline Westerhold.

The alternate medical care claim came on for hearing on December 30, 2022. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 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.

The evidentiary record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibits A-D, and claimant's testimony during the telephonic hearing.

During the course of the hearing defendants accepted liability for the August 11, 2022 work injury and for the left shoulder condition for which claimant is seeking treatment. Defendants denied liability for a right hip condition related to the August 11, 2022 work injury, but explained that they had accepted the right hip under a different date of injury. Because the alternate care petition filed by claimant was only for the August 11, 2022 date of injury, any claim related to the right hip must be dismissed. Given their denial of liability for the condition sought to be treated in the petition for alternate medical care, defendants lose their right to control the medical care claimant seeks for his right hip related to an August 11, 2022 date of injury during their period of denial and the claimant is free to choose that care. Brewer-Strong v. HNI Corp., 913

N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

As a result of the denial of liability for the right hip condition sought to be treated in this proceeding, claimant may obtain reasonable medical care from any provider for this treatment but at claimant's expense and seek reimbursement for such care using regular claim proceedings before this agency. Haack v. Von Hoffman Graphics, File No. 1268172 (App. July 31, 2002); Kindhart v. Fort Des Moines Hotel, I Iowa Industrial Comm'r Decisions No. 3, 611 (App. March 27, 1985). "[T]he employer has no right to choose the medical care when compensability is contested." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). Therefore, defendants are precluded from asserting an authorization defense as to any future treatment during their period of denial. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018).

ISSUE

The issue for resolution is whether the claimant is entitled to alternate medical care.

FINDINGS OF FACT

Claimant, Kevin Lenth, sustained a work injury to his left shoulder on August 11, 2022. Mr. Lenth resides in Afton, Iowa. Defendants sent him to DMOS Orthopaedic Centers ("DMOS") in Des Moines for treatment. Mr. Lenth has attended several appointments at DMOS with Jason Sullivan, M.D. Mr. Lenth is requesting defendants authorize treatment with an orthopedic surgeon at Greater Regional Health in Creston, Iowa which is 16 miles from his home. Mr. Lenth testified the drive from his home to DMOS is 64 miles and takes approximately one hour and fifteen minutes each way. For each appointment at DMOS he must travel in excess of 120 miles and misses approximately four hours from work. (Testimony) According to Google Maps, the trip is 60 miles each way. (Defendants' Ex. B) After the second and third appointment at DMOS his employer asked him what was taking so long. Additionally, the 120-mile round trip drive increases the symptoms in his left shoulder and right hip. (Testimony)

I find that the drive from Mr. Lenth's home to DMOS is in excess of 50 miles each way. I find that there are orthopedic surgeons located in Creston, Iowa, which is approximately 16 miles from Mr. Lenth's home. There is no evidence in the record to show that the treatment Mr. Lenth would receive from an orthopedic surgeon at DMOS is superior to the treatment an orthopedic surgeon could offer in Creston, Iowa. I further find that requiring Mr. Length to travel excessive distances to obtain medical treatment is unduly inconvenient for him and constitutes unreasonable care.

REASONING AND 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., 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.
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> [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 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 16, 1975).

This agency has routinely held that requiring a claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant, and is a claim properly brought under petition for alternate medical care pursuant to rule 876 IAC

4.48. Myers v. Trace, Inc., File No. 1238262 (Alt. Care Dec. November 22, 2002); Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Care Dec. September 24, 2004); Solland v. Fleetguard, Inc., File No. 5006970 (Alt. Care Dec. April 19, 2004); Chamness v. Richers Trucking, File No. 5030847 (Alt. Care Dec. October 15, 2009). Generally, 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); Schrock v. Corkery Waste Disposal, Inc., File No. 1133725 (Alt. Med. Care Dec. June 26, 1996) (120-mile round trip is excessive); Schulte v. Vocational Services of Area Residential Care, File No. 1134342 (Alt. Med. Care Dec. September 6, 1996) (care more than 70 miles away is unreasonable). A 50-mile radius is generally considered a reasonable distance to travel for treatment in workers' compensation cases. Bitner v. Cedar Falls Construction Co., File No. 5013852 (Alt. Med. Care Dec. September 24, 2004).

As noted above, agency precedent indicates that requiring a claimant to travel more than 50 miles for treatment is considered unreasonable care. I conclude the care offered by defendants requiring claimant to travel excessive distances to obtain medical treatment is unduly inconvenient for claimant. Thus, I conclude the care offered by defendants is not a reasonable distance from his residence. The care offered by defendants is not reasonable. Claimant has carried his burden of proof he is entitled to alternate medical care consisting of treatment and care for the left shoulder in Creston, Iowa.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care related to an August 11, 2022 right hip injury is dismissed.

Claimant's petition for alternate medical care for an August 11, 2022 left shoulder injury is granted.

Defendants shall authorize and pay for care and treatment for claimant's right shoulder at Greater Regional Care in Creston as requested by claimant.

Signed and filed this 30th day of December, 2022.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)

Caroline Westerhold (via WCES)