BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AUSTIN HEILMAN, Claimant, vs. LANDUS COOPERATIVE, Employer, and NATIONWIDE AGRIBUSINESS INSURANCE, Insurance Carrier, Defendants.	File No. 5068856 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, Austin Heilman. Claimant appeared through his attorney, Janece Valentine, and defendants appeared through their attorney, Jeffrey Lanz.

The petition for alternate medical care came on for a telephone hearing on July 12, 2019. 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 record contains claimant's exhibits 1 and 2, along with defendants' exhibits A through F. No testimony was received. Counsel provided oral argument.

ISSUE

Whether the medical treatment provided by defendants to claimant for his low back is unreasonable.

Specifically, claimant seeks an order compelling defendants to authorize a functional capacity evaluation as recommended by the authorized treating physician.

FINDINGS OF FACT

The undersigned having considered all of the evidence in the record and argument of counsel, finds:

On July 1, 2019, claimant filed his application for alternate medical care concerning a low back condition arising out of and in the course of his employment on June 1, 2018. Defendants accepted the June 1, 2018 work injury and the current condition for which claimant seeks medical treatment.

Defendants advised that claimant had an additional work injury on December 6, 2018, which they have accepted, and another incident at home on December 8, 2018, which they have denied.

Nevertheless, as stated above, defendants have accepted the June 1, 2018 work injury and the current condition that is the subject of this alternate care proceeding. Therefore, having accepted responsibility for claimant's current condition and not having denied the claim, the alternate dates are not relevant at this time, because alternate care petitions are not the venue for the determination of causation. Although causation is not at issue and is not determined in this order, I note that the authorized treating physician has related the two later incidents to the original work injury in June, 2018. (Ex. 2, D-5)

The issue in this case is that the authorized treating physician, Steven Meyer, M.D., on May 1, 2019, recommended claimant undergo a repeat FCE to determine claimant's present capabilities and defendants have not authorized the evaluation. Rather, they sent claimant to William Boulden, M.D., for an independent medical examination (IME) who opined that an FCE was not indicated and claimant should instead undergo "the German ball stabilization exercise program," which has not yet been scheduled.

Defendants do not deny that the authorized treating physician recommended an FCE, but argue that the additional therapy recommended by Dr. Boulden is reasonable and is not unreasonable to deny the FCE because it is merely a test and not treatment and therefore not appropriate under Iowa Code section 85.27.

Claimant argued that it is not appropriate to cut off the recommended treatment of the authorized treating physician with an IME recommendation for different treatment.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975).

Concerning defendants' argument that an FCE is merely "testing" and not treatment, I note that the language of Iowa Code section 85.27 provides for medical "services" not treatment. Iowa Code section 85.39. Further, many "tests" such as an EMG/NCV, MRI or x-ray have been the subject of alternate care matters in the past. For example an x-ray may be performed near the end of treatment to confirm that a vertebral fusion has properly healed. The x-ray itself merely provides information to the physician and would not be "treatment" according to defendant, but is used to assess the patients then existing condition and may or may not lead to any additional treatment or change in treatment. The FCE in this case is similar. I find defendants' argument unpersuasive that tests are not appropriate for an alternate care petition.

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); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); 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.

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).

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).

Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (review-reopening decision June 17, 1986).

In this case, the authorized treating physician recommended an FCE, which defendants have not authorized. The purpose of the recommended FCE is to "see if things have changed since his injury in December." This recommendation is based on the concern Dr. Meyer does "not think that Austin is able to function under his current functional capacity," which is based on an earlier FCE. In other words the presently recommended FCE is to determine claimant's condition to ensure the present restrictions are appropriate or adjust them according to the new FCE.

Whether or not additional treatment after the FCE may or may not be appropriate is a different question. The fact that an FCE may traditionally signal the end of treatment is not necessarily indicted in this case. There is no statement from Dr. Meyer that treatment will end with the FCE.

I conclude based on the above stated law that failure to authorize the FCE as recommended by the authorized treating physician, which will assist with the establishment of current and safe restrictions, is unreasonable.

Therefore, I conclude that claimant has proven his claim for alternate medical care. Defendants are ordered to authorize and pay for the FCE as recommended by Dr. Meyer.

ORDER

IT IS THEREFORE ORDERED:

Defendants shall immediately authorize and timely pay for the FCE as recommended by the authorized treating provider, Dr. Steven Meyer.

Signed and filed this 15th day of July, 2019.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Janece M. Valentine
Attorney at Law
809 Central Avenue, Ste 415
Fort Dodge, IA 50501
jvalentine@valentinelaw.net

Jeffrey W. Lanz
Attorney at Law
2700 Westown Pkwy, Ste. 170
West Des Moines, IA 50266
jlanz@desmoineslaw.com

TJG/kjw