

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LARRY DONLEY,

Claimant,

vs.

PYLE TRANSPORTATION,

Employer,  
Defendant.

File No. 5054517

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. The expedited procedure of rule 876 IAC 4.48, the "alternate medical care" rule, is requested by claimant, Larry Donley.

Claimant filed a petition on September 24, 2015. He alleged at paragraph 5 of his petition:

Reason for dissatisfaction and relief sought: Employer authorized provider has recommended an MRI. Employer failed to authorize the MRI and failed to schedule the MRI. Claimant seeks an order authorizing the MRI.

Defendant failed to answer claimant's original notice and petition. Defendant submitted no exhibits in advance of hearing and did not appear for the alternate medical care hearing. The agency file demonstrates claimant served a copy of the original notice and petition for alternate medical care upon the employer on September 28, 2015 via certified mail, return receipt. Claimant's counsel represented he made efforts to contact defendant in attempts to resolve this matter prior to seeking agency intervention. Additionally, the agency file reveals claimant's counsel directed two letters to defendant dated September 4 and September 11, 2015 seeking authorization of the requested medical care.

The alternative medical care claim came on for hearing on October 6, 2015. The proceedings were recorded digitally, and constitute the official record of the hearing. By an order filed February 16, 2015 by the workers' compensation commissioner, this

decision is designated final agency action. Any appeal would be by petition for judicial review under Iowa Code section 17A.19.

The record consists of claimant's exhibits 1 through 5.

### ISSUE

The issue presented for resolution is whether claimant is entitled to alternate medical care in the form of authorization of a left knee MRI.

### FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant's counsel represented claimant sustained an injury to his left knee while performing his work duties on September 1, 2015. Claimant reported the injury to defendant and was directed to seek care at Mercy Business Health Services (Mercy). Mercy records of September 1, 2015 denote an assessment of definite signs of ligament injury and accordingly, ordered an MRI of claimant's left knee. (Exhibit 4)

On September 4, 2015, claimant's attorney authored a letter to defendant requesting authorization of the ordered MRI. (Ex. 1) Counsel sent repeat correspondence on September 11, 2015, directed to "Rhonda" at defendant. By his letter, counsel sought to clarify the details of claimant's injury and indicated he would not file an alternate medical care petition until September 15, 2015, so as to allow defendant the opportunity to consult with counsel. (Ex. 2)

On September 24, 2015, claimant filed the instant alternate care petition seeking authorization of the ordered MRI. Claimant provided a copy of the certified mail return receipt, indicating the petition was received by Rhonda Pyle of Pyle Transportation on September 28, 2015. (Ex. 5) This agency set the matter for hearing on October 6, 2015 at 10:30 a.m. and sent notice of the scheduled hearing to claimant's counsel and to Pyle Transportation.

I find that claimant properly served the employer a copy of the original notice and petition for alternate medical care. I further find that claimant's counsel attempted to communicate with defendant prior to filing the petition for alternate medical care in an effort to resolve the issue without agency intervention.

Claimant's original notice and petition asserts in paragraph seven that the employer does not dispute liability on this claim. Defendant failed to appear, failed to answer the petition, and has essentially defaulted in this alternate medical care proceeding. Therefore, the allegations of paragraph seven are accepted as true. Accordingly, I find defendant has failed to authorize the MRI ordered by defendant's authorized provider.

## 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).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the 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.

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).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Claimant sustained a work-related injury on September 1, 2015. After promptly reporting the injury to his employer, defendant referred claimant for care at Mercy. The medical provider at Mercy initiated a course of conservative treatment and referred claimant for a left knee MRI. Despite multiple requests for authorization of this care by claimant's counsel, defendant has failed to authorize the ordered MRI.

Defendant is not entitled to interfere with the medical judgment of its chosen provider, herein Mercy. Mercy staff ordered a left knee MRI, and defendant is not entitled to withhold authorization of that ordered care. Additionally, by failing to authorize the MRI, defendant has caused unnecessary and unreasonable delay in claimant's treatment process. Furthermore, defendant failed to answer or appear in this matter to provide any justification for the impermissible interference with the treatment recommendation of its chosen provider. Claimant has clearly established entitlement to alternate care in the form of an order authorizing a left knee MRI.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's request for alternate medical care is granted. Claimant is entitled to the left knee MRI as ordered by Mercy on September 1, 2015.

Signed and filed this 6<sup>th</sup> day of October, 2015.



---

ERICA J. FITCH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Eric J. Loney  
Attorney at Law  
1311 - 50<sup>th</sup> St.  
West Des Moines, IA 50266  
[eric@loneylaw.com](mailto:eric@loneylaw.com)

Pyle Transportation  
104 East First St.  
Schaller, IA 51053  
CERTIFIED AND REGULAR MAIL

EJF/sam