BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK STOGDILL, Claimant, vs. AMCOR FLEXIBLES, LLC, Employer, and TRAVELERS INDEMNITY CO. OF CT., Insurance Carrier, Defendants.	File No. 21005758.02 ALTERNATE MEDICAL CARE DECISION Head Note: 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, Mark Stogdill. Claimant appeared personally and through his attorney, Tom Drew. Defendants appeared through their attorney, Kevin Rutan.

The alternate medical care claim came on for hearing on October 28, 2021. 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 Exhibit 1, pages 1-6, and Defendants' Exhibit A, pages 1-6, and claimant's testimony during the telephonic hearing. During the course of the hearing defendants accepted liability for the February 24, 2020, work injury and for the neck and right shoulder conditions that for which claimant is seeking treatment.

ISSUE

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

FINDINGS OF FACT

Claimant, Mark Stogdill, was involved in a work-related accident wherein he sustained injuries to his neck and right shoulder. Claimant underwent conservative treatment, but it was generally not successful. He was sent to see Kyle S. Galles, M.D. at Iowa Ortho. (Testimony)

Dr. Galles saw Mark on April 12, 2021, with persistent right shoulder pain. He reported that his problems began about a year ago due to a forklift incident. Dr. Galles noted that over the past year Mark had tried physical therapy and a cortisone injection without much benefit. The assessment was arthritis of the right shoulder region. He opined that the injury at work was a significant contributing factor to his present symptoms. At that time Mark was not really interested in anything surgical. A discussion was held about a traditional shoulder arthroplasty. Mark wanted to give this surgery more thought. (Cl. Ex. 1, pp. 1-3)

Mark testified that after Dr. Galles recommended shoulder surgery, he wanted a second opinion to see if there were other treatment options. On May 25, 2021, Mark saw Nicholas J. Honkamp, M.D., at Des Moines Orthopaedic Surgeons, P.C. (DMOS) for a second opinion. Dr. Honkamp's assessment was pain in right shoulder and arm pain. The doctor noted that Mark had known grade 4 glenohumeral arthritis which the doctor believed was partly the cause of his symptoms. He questioned whether there was some cervical nerve root impingement on the right side as well. Dr. Honkamp felt it was worth trying some selective injections into the shoulder and neck to try to determine which source of pain was bothering him the most. He had evidence of pathology in both. Dr. Honkamp was willing to give him a steroid injection into his shoulder and to set him up with an interventional physiatrist to have a possible epidural steroid injection into his cervical spine. Mark could then report back which area was bothering him more which could help direct treatment. Mark was in agreement with Dr. Honkamp's plan. Mark testified that the shoulder injection did not provide him with any relief. (Def. Ex. A, pp. 1-3; testimony)

On August 18, 2021, Mark saw Mauricio Acebey, M.D. at DMOS. He had undergone a C7-T1 cervical epidural steroid injection under fluoroscopy using an interlaminar approach on July 29, 2021. He had no improvement from the injection in his neck. Dr. Acebey suspected most of his symptoms stemmed from the right shoulder issues which revealed rotator cuff pathology and advanced osteoarthritic changes. He recommended further evaluation and treatment of the shoulder. (Cl. Ex. 1, pp. 4-5)

On September 29, 2021, defendants reminded claimant that Dr. Honkamp at DMOS was the authorized treating provider. Defendants also advised that there was an

active referral to Dr. Acebey for pain care, for diagnostic and pain treatment. Defendants advised that if Mark needed to follow up for his shoulder, he could call DMOS for an appointment. (Def. Ex. A, p. 4)

On September 30, 2021, claimant advised defendants that he was ready to proceed with surgery and would prefer to return to Dr. Galles for treatment. (Cl. Ex. 1, p. 6)

On October 8, 2021, defendants advised that Dr. Honkamp is the authorized treating doctor. Defendants scheduled an appointment for Mark for October 22, 2021, at 11:15 a.m. The purpose of the examination was for shoulder follow-up and post-injection of the neck. That same day, claimant advised he would not be attending the appointment with Dr. Honkamp and would be filing a petition for alternate medical care. Mark did not attend that appointment with Dr. Honkamp. (Def. Ex. A, p. 5)

Mark testified that he is now very much ready to undergo the total shoulder replacement surgery and would like to return to Dr. Galles for the surgery. He is eager to undergo the shoulder surgery because his shoulder pain affects every aspect of his life, including his ability to sleep. According to Mark, Dr. Honkamp agreed that he needed total shoulder replacement surgery. He advised Dr. Honkamp that he wanted Dr. Galles to perform his shoulder surgery. According to Mark, Dr. Honkamp told him that Dr. Galles was a good choice, he is a very intelligent surgeon and a good surgeon. Mark testified that the care offered at DMOS has not significantly improved any of his conditions. (Testimony)

Mark is requesting that he be allowed to return to Dr. Galles to undergo the total shoulder replacement surgery that Dr. Galles recommended in April of 2021. After Dr. Galles made that recommendation, Mark requested a second opinion to explore whether there were other treatment options. Defendants sent Mark to Dr. Honkamp. Mark saw Dr. Honkamp who made recommendations for injections for diagnostic and treatment purposes. Defendants advised Mark that Dr. Honkamp was an authorized treating provider and set up a follow-up visit for him with Dr. Honkamp; Mark refused to attend that appointment. Mark now contends that the treatment offered by Dr. Honkamp did not significantly improve any of his conditions. Unfortunately, Mark only attended one appointment with Dr. Honkamp and refused to attend the follow-up appointment because he now desires to return to Dr. Galles. Claimant seems to contend that the treatment he received at DMOS is inferior to the treatment recommended by Dr. Galles. However, I do not find this argument to be persuasive because claimant refused to attend the follow-up appointment with Dr. Honkamp to see what, if any, treatment Dr. Honkamp would recommend in light of Mark's response to the injections. Furthermore, I find the treatment offered by the defendants, a follow-up visit with Dr. Honkamp, is reasonable at this time.

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. 5.904(3)(e); 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.
>
> [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).

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).

Based on the above findings of fact, I conclude claimant has failed to demonstrate the authorized care is unreasonable. Additionally, I conclude claimant has failed to prove the care he is receiving is "inferior or less extensive" care than other available care requested by the employee.

ORDER

THEREFORE IT IS ORDERED:

Claimant's petition for alternate medical care is denied at this time.

Signed and filed this 29th day of October, 2021.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Tom Drew (via WCES)

Kevin Rutan (via WCES)