BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARENJEANNE DUNBAR,	:	
Claimant,	:	File Nos. 19700674.01, 19700675.01
vs.	:	ALTERNATE MEDICAL
MENARDS, INC.,	:	CARE DECISION
Employer, Defendant.	:	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, Karenjeanne Dunbar. Claimant appeared telephonically and through her attorney, William Nicholson. Defendant failed to appear for the alternate medical care hearing.

The alternate medical care claim came on for hearing on January 3, 2020. 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.

Claimant offered six pages of exhibits, marked as Exhibits A through B. No other evidence was received into the evidentiary record and the evidentiary record closed at the conclusion of the hearing on January 3, 2019.

Given defendant's failure to appear for hearing or otherwise defend the alternate medical care hearing, it is found to be in default. All allegations of the claimant's petition for alternate medical care are accepted as accurate.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of treatment with Matthew Bollier, M.D., and Elayne Gustoff, ARNP, including but not limited to injections, a TENS unit, or additional evaluation or testing as Dr. Bollier or Ms. Gustoff recommend.

FINDINGS OF FACT

Claimant sustained a work-related injury to her right shoulder on either September 21, 2018 or October 5, 2018. The injury caused the need for treatment, including right rotator cuff surgery. (Original Notice and Petition Concerning Application for Alternate Care; Claimant's Testimony)

That surgery was authorized by defendant and performed by Dr. Bollier on March 8, 2019. (Cl. Testimony) After surgery, claimant participated in a course of physical therapy but continued to have a difficult recovery. (Cl. Testimony) Dr. Bollier and Ms. Gustoff recommended either injections or use of a TENS unit to provide her pain relief during her physical therapy. (Cl. Testimony; Cl. Exhibit A) Neither the injections nor the TENS unit were authorized, however. (Cl. Testimony)

When claimant returned to Dr. Bollier's office on July 22, 2019, Dr. Bollier was under the impression that the injections and/or TENS unit had been authorized. Claimant had to inform him otherwise. (Cl. Ex. B, page 1) Dr. Bollier made a second recommendation, but again, neither were authorized. (Cl. Ex. B, pp. 2-3; Cl. Testimony)

Claimant was seen by Dr. Bollier in October for what seems to the undersigned to have been a final visit for purposes of evaluating permanency. (Cl. Testimony) This appointment was authorized by defendant. (Cl. Testimony) Claimant again informed Dr. Bollier that the injections and TENS unit he recommended had never been authorized. Dr. Bollier explained to claimant that he was uncertain whether they would, at this point in time, provide claimant any relief.

Claimant expressed her dissatisfaction with the defendant's failure to authorize care. (Original Notice and Petition) Claimant's counsel sent defendant copies of the petitions for alternate medical care on December 21 and 23, 2019, respectively. (Proof of Service)

As the authorized surgeon, Dr. Bollier's recommendations are considered to be reasonable and medically necessary care. No contrary evidence exists in this record upon which defendants could reasonably dispute that the authorized surgeon's recommendations are anything but reasonable and necessary.

Defendant has delayed in authorizing treatment recommended by the authorized medical provider. Defendant is not offering reasonable medical care suited to treat claimant's work injuries.

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).

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 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. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). 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).

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).

"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).

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

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

I found that Dr. Bollier is an authorized medical provider and that his treatment recommendations are reasonable and necessary. Similarly, I found that defendant has not authorized or complied with the treatment recommendations of the authorized medical provider. Defendant is not offering any medical care at the current time. I conclude that claimant has established that the treatment she requests—the recommendations of Dr. Bollier—is reasonable.

Having found that defendant offered no alternative treatment, I conclude claimant has established entitlement to an order directing defendant to authorize a follow-up appointment with Dr. Bollier to address whether his original treatment recommendations are still viable and if not, what new recommendations are appropriate, if any.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is granted.

Defendant shall immediately authorize and timely pay for a follow-up appointment with Dr. Bollier to determine whether additional treatment is appropriate.

Signed and filed this 3rd day of January, 2020.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

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