

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DALE HAYES,

Claimant,

vs.

EAGLE WINDOW &amp; DOOR MFG., INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 5038676.01

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, Dale Hayes.

The alternate medical care claim came on for hearing on December 17, 2020. The proceedings were digitally recorded which constitutes the official record of this proceeding. This ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code 17A.

The record consists of Claimant's Exhibits 1 and 2 and Defendants' Exhibit A.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of a referral to a neurologist.

## FINDINGS OF FACT

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

Defendants admitted liability for an injury occurring on July 20, 2010. Claimant was electrocuted on July 20, 2010. This agency found that claimant had permanent injury to the work related electrocution.

The defendants have been providing medical care to the claimant. Claimant receives treatment at the Finley Pain Clinic. His authorized physician is Tim Miller, M.D. Claimant testified that he last saw Dr. Miller in January 2020. Claimant would see Angel Keller, ARNP at the Finley Pain Clinic every other month.

Claimant has been experiencing increasing pain in his neck, shoulders and arms. Claimant went to his primary care physician, Thomas Schreiber, M.D., for care for the above work injury related symptoms in July 2020. Claimant testified Dr. Schreiber recommended physical therapy and that claimant should be evaluated by a neurologist.

On July 10, 2020, claimant informed defendants that claimant's physician recommended that claimant receive physical therapy and a referral to neurology. (Exhibit. 1, page. 3) Claimant testified that he spoke to Ms. Keller, in July 2020. Claimant testified that he asked Ms. Keller for a referral to a neurologist and Ms. Keller told him he was not entitled to a referral. Claimant testified that Ms. Keller said that since he saw a neurologist shortly after the 2010 injury he did not need to see one now.

On July 17, 2020, defendants' counsel wrote claimant's counsel and informed claimant that claimant was not entitled to additional medical treatment. (Ex. 2, p. 4) On October 28, 2020, claimant's counsel wrote defendant's counsel and requested a referral to a neurologist. (Ex. 1, pp. 1, 2)

Claimant filed his petition for alternate medical care on December 7, 2020. On December 14, 2020, the defendants' attorney wrote claimant that claimant was free to return to Dr. Miller for updated treatment and any appropriate referral. (Ex. A)

### 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); 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).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she 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).

On the other hand, 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). In other words, 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."


The defendants have agreed to allow an appointment with Dr. Miller. Claimant, understandably, has expressed frustration in the time it has taken for a referral to a neurologist. Dr. Schreiber did not make a written recommendation and there are no medical documents submitted to support the request for a neurologist. Without additional medical evidence, claimant has not shown that the defendants have denied reasonable care. It is the claimant's burden of proof to show the defendants are failing to provide reasonable care. Based upon the record before me, claimant has failed to show the defendants have failed to provide reasonable care.

ORDER

THEREFORE IT IS ORDERED:

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

Signed and filed this 17<sup>th</sup> day of December, 2020.

A handwritten signature in black ink, reading "James F. Elliott", is written over a horizontal line.

JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark Sullivan (via WCES)

Alison Stewart (via WCES)