BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARRIE TAYLOR, Claimant, vs. WALGREENS, Employer, and SEDGWICK, Insurance Carrier, Defendants.	:	File No. 5024858 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. Claimant, Carrie Taylor, sustained a stipulated work injury in the employ of defendant Walgreens on November 12, 2007, and now seeks an award of alternate medical care under Iowa Code section 85.27 from that employer and its insurance carrier, defendant Sedgwick. Taylor invoked the expedited procedure set forth under 876 Iowa Administrative Code 4.48.

The claim was heard by telephone conference call on July 2, 2009. The record consists of Taylor's exhibits 1-3 and defendants' exhibits A-F. Argument of counsel was heard, but no testimony was offered. The entire hearing was recorded electronically, which constitutes the official record of proceedings. The undersigned has been delegated authority to issue final agency action in the premises.

ISSUES

The sole issue presented for resolution is whether Taylor is entitled to an award of alternate medical care.

FINDINGS OF FACT

At another hearing between these parties on February 27, 2009, defendants authorized a one-time evaluation by Carrie Taylor's preference and former treating physician, physiatrist Kurt A. Smith, D.O., with whom Taylor had previously requested

care from defendants. Dr. Boulden, an orthopedic surgeon, was the authorized physician at that time.

Following the authorized visit, Taylor continued to see Dr. Smith without authorization. Dr. Boulden has nothing further to offer. Dr. Smith recommended physical therapy, which was the relief sought in Taylor's original petition for alternate medical care.

Defendants thereupon agreed to authorize the physical therapy recommended by Dr. Smith, and named a neurosurgeon, Dr. Boarini, as authorized treating physician. Taylor then filed an amended petition seeking full authorization for Dr. Smith.

Although Dr. Boulden has no further care to offer, there is no expert evidence in the record showing that this is unreasonable. Likewise, there is no showing that Dr. Boarini's care, once it begins, is likely to be unreasonable.

CONCLUSIONS OF LAW

Responsibility for medical care is governed by Iowa Code section 85.27, which provides:

> [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 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). 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.
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> [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.

Notwithstanding Taylor's preference for Dr. Smith, there is no showing that the care actually authorized by defendants – first, Dr. Boulden and now Dr. Boarini, fails to meet statutory standards of reasonableness. Having failed to meet her burden of proof, Taylor's petition must be denied.

ORDER

THEREFORE, IT IS ORDERED:

Taylor's petition for alternate medical care is denied.

Signed and filed this ___6th___ day of July, 2009.

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DAVID RASEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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