

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH DORWEILER,

Claimant,

vs.

INTERSTATE BATTERIES OF  
UPPER IOWA,

Employer,

and

SELECTIVE INSURANCE,

Insurance Carrier,  
Defendants.

File No. 20700461.01

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, Kenneth Dorweiler. Claimant appeared telephonically and through his attorney, Chris Spaulding. Defendants failed to appear for the alternate medical care hearing.

The alternate medical care claim came on for hearing on June 2, 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 testified but offered no written exhibits. No other evidence was received into the evidentiary record and the evidentiary record closed at the conclusion of the hearing on June 2, 2020.

Given defendants' failure to appear for hearing or otherwise defend the alternate medical care hearing, they are 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 right shoulder surgery as recommended by Dr. Pothoff.

## FINDINGS OF FACT

Claimant sustained a work-related injury to his right shoulder on January 27, 2020. The injury caused the need for treatment, which was at some point authorized by defendants. (Original Notice and Petition Concerning Application for Alternate Care; Claimant's Testimony)

After an evaluation by his primary care provider, an x-ray, and an MRI, claimant was eventually referred to Dr. Pothoff. Dr. Pothoff recommended surgery, and at some point in early April claimant indicated he wished to proceed with that surgery. (Claimant's Testimony)

Claimant, however, has received no word from defendants regarding whether the recommended surgery is or will be authorized. At the present time, no care is being authorized by defendants. (Cl. Testimony)

Claimant expressed his dissatisfaction with the defendants' failure to authorize care. (Original Notice and Petition)

Because no contrary evidence exists in the record, Dr. Pothoff's recommendations are considered to be reasonable and medically necessary care.

Defendants delayed in authorizing claimant's recommended treatment and are not authorizing any alternative care at the present time. As a result, I find defendants are 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 Rule of Appellate Procedure 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, 528 N.W.2d at 123.

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 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 Dr. Pothoff’s treatment recommendations to be reasonable and necessary. Further, not only have defendants not authorized Dr. Pothoff’s treatment, but they are not offering any medical care at the current time. For these reasons, I conclude claimant has established entitlement to an order directing defendants to authorize the surgery recommended by Dr. Pothoff.

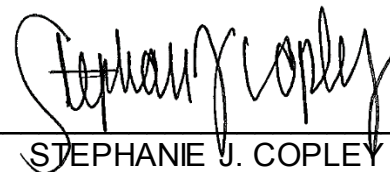
ORDER

THEREFORE, IT IS ORDERED:

Claimant’s petition for alternate medical care is granted.

Defendants shall immediately authorize and timely pay for the surgery as recommended by Dr. Pothoff.

Signed and filed this 3<sup>rd</sup> day of June, 2020.



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STEPHANIE J. COPLEY  
DEPUTY WORKERS’  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Interstate Batteries of Upper Iowa (via Regular Mail)  
401 Campus Dr.  
Huxley, IA 50124

Selective Insurance (via Regular Mail)  
PO Box 72552  
London, KY 40702