

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHON J. MORTON,	FILED	
Claimant,	SEP 14 2015	File No. 5048472
vs.	WORKERS COMPENSATION	ALTERNATE MEDICAL
ANNETT HOLDINGS, INC. d/b/a	:	CARE DECISION
TMC TRANSPORTATION, INC.,	:	
Employer,	:	
Self-Insured,	:	HEAD NOTE NO: 2701
Defendant.	:	

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, Stephon J. Morton. Claimant appeared personally and through his attorney, Christoph Rupprecht. Defendant appeared through attorney, Sasha L. Monthei. All parties were well-represented by counsel, who presented articulate and convincing arguments on behalf of all parties.

The alternate medical care claim came on for hearing on September 11, 2015. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Iowa Workers' Compensation 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 record consists of claimant's exhibits 1 and 2 and defendant's exhibits A through C. All exhibits were offered without objection and received into evidence. One witness testified electronically. Claimant testified. Defendant elected not to call any witnesses to testify at the time of hearing.

FINDINGS OF FACT

Claimant sustained a work-related injury to his back on February 14, 2012. Defendant authorized treatment with Lee Kelley, M.D. and Charles Brownlow, M.D., in Newnan, Georgia.

Claimant lives 12 miles from Dr. Kelley's office. Claimant lives approximately 29 miles from Dr. Brownlow's office.

Defendant had consistently provided private transportation for claimant so he could attend his scheduled doctors' appointments. Claimant did not have a working vehicle. The transportation provided took claimant to and from all appointments until the latter part of June 2015. The cost was not detailed.

Defendant ceased providing private transportation to claimant after video surveillance was conducted on March 28, 2015; April 1, 2015; April 27, 2015; and May 6, 2015. During the course of the surveillance, defendant learned claimant was driving a black vehicle. Claimant is not restricted from driving a motor vehicle.

During the hearing, claimant admitted he had been driving his girlfriend's black BMW motor vehicle on a number of occasions. However, he testified his girlfriend is a nurse who is on call. She needs her vehicle for her employment and it is not always available for claimant's use. Claimant also testified his mother owns a car but she works two jobs and is not always available to drive to doctors' appointments. Finally, claimant testified his best friend has driven him to one appointment, but the friend is not available on a routine basis. Defendant has reimbursed claimant for medical mileage to and from doctors' appointments.

Claimant is requesting transportation for him for his doctors' appointments or else he is asking defendant to advance him the cost of a round trip fare on Uber or to advance the round trip fare of a taxi cab ride.

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); 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).

Claimant has proven by a preponderance of the evidence that he does not have reliable transportation of his own. Defendant is required to provide reasonable and necessary transportation expenses. Defendant may select private transportation or it may advance the round-trip cost of a taxi cab fare or the round-trip costs of Uber.

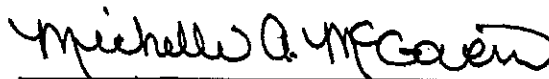
Defendant is not required to provide any sacroiliac (SI) joint injections. Claimant dismissed that portion of his claim at the commencement of the hearing.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for alternate medical care is sustained with respect to medical transportation.

Signed and filed this 14th day of September, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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