BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS STOWELL,

Claimant,

vs.

AMWOOD HOMES, INC.,

Employer,

and

ACCIDENT FUND INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5043409

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 sustained a stipulated work injury in the employ of defendant on August 18, 2011. He now seeks an award of alternate medical care under Iowa Code section 85.27 and 876 Iowa Administrative Code 4.48.

The case was heard by telephone conference call on May 1, 2015. The record consists of claimant's exhibits A-D, defendant's exhibit 1, and the testimony of Karla Nachazel. The entire hearing was recorded via digital means, which constitutes the official record of proceedings. By standing order of the workers' compensation commissioner the undersigned was delegated authority to issue final agency action in the matter.

ISSUES

Liability is admitted on this claim. The sole issue presented for resolution is whether or not claimant is entitled to an award of alternate medical care.

FINDINGS OF FACT

The claimant was employed by the Amwood Homes, Inc., on August 18, 2011 when he suffered an injury arising out and in the course of employment. As a result of the injury the claimant is a paraplegic and confined to a wheelchair.

The claimant requires physical therapy to maintain strength. His last physical therapy was on March 13, 2015 as the provider (Sunny Hill) will no longer treat the claimant since defendants have not been paying the bills. Defendants own exhibit references that bills back to at least 2013 were unpaid in April of 2015. By not paying for required treatment and thus causing treatment to be terminated, the defendants have abandoned care.

CONCLUSIONS OF LAW

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [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.
>
> [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 (Iowa 1995); Pirelli-Armstrong Tire Co., 562 N.W.2d at 437 (Iowa 1997).

The claimant has the burden of proving that the care authorized by the defendants is unreasonable or ineffective, or unduly inconvenient. The claimant has shown all. The care is unreasonable or ineffective since it has been terminated due to non-payment. It is unduly inconvenient for required treatment to be stopped. The defendants have abandoned care.

The consequence of failing to promptly provide care is the loss of the right to choose the care. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999). I see no authority for the proposition that somehow defendants regain the right to choose the care at some later date. Defendants should have considered the consequences of their actions when they chose to ignore their statutory responsibilities years after the Cordell decision, a decision that affirmed this agencies long standing alternate care precedents dating back to 1995. Unreasonableness can be established by showing 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. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Long v. Roberts Dairy Company, 528 N.W. 2d 122 (Iowa 1995). Unreasonableness can be established by showing that the care authorized by the employer has not been effective and is "inferior or less extensive" than other available care requested by the employee. Pirelli-Armstrong, at 437.

Defendants have failed to promptly provide the care recommended since their actions ended the care. They have shown a disregard for the health of the claimant. In the case before us, claimant has met his burden and it was found as a matter of fact that the defendant is not providing care without undue inconvenience to the employee.

The claimant can continue to go to Sunny Hill (or other provider if available and he desires) and the defendant's job is to promptly pay, not adjust the bill, but to pay the bill. If defendants believe a future bill is unreasonable they must avail themselves of the Iowa Workers' Compensation fee dispute process as opposed to not paying the provider. Defendants will immediately take all steps necessary to see that care is provided and continues without further interruption.

ORDER

THEREFORE, IT IS ORDERED:

The application for alternate medical care is granted as detailed above.

Signed and filed this 1st day of May, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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