

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LONNIE FENTRESS,

Claimant,

vs.

ALL IN A DAY, LLC/AVENTURE
STAFFING,

Employer,

and

RIVERPORT INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED
APR 19 2019
WORKERS' COMPENSATION

File No. 5068034

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

On February 16, 2015, the Iowa workers' compensation commissioner issued an order delegating authority to deputy workers' compensation commissioners, such as the undersigned, to issue final agency decisions on applications for alternate care. Consequently, there is no appeal of this decision to the commissioner, only judicial review in an appropriate district court under the Iowa Administrative Procedure Act, Iowa Code chapter 17A.

On April 5, 2019, Lonnie Fentress (claimant) filed an application for alternate care under Iowa Code section 85.27(4) and 876 Iowa Administrative Code section 4.48. Defendants All In A Day, LLC / Adventure Staff (employer) and Riverport Insurance Company (insurance carrier) did not file an answer in response to the application.

The undersigned presided over an alternate care hearing that was held by telephone and recorded on April 18, 2019. That recording constitutes the official record of the proceeding. See 876 IAC § 4.48(12). Fentress participated personally and through attorney Sara Lamme. The defendants did not participate in the hearing. The record consists of:

- Testimony at hearing by Fentress; and
- Claimant's Exhibit 1.

ISSUE

The issue under consideration is whether Fentress is entitled to alternate care under Iowa Code section 85.39 in the form of physical therapy from a provider located closer to his home.

FINDINGS OF FACT

After consideration of the evidence, including the credible testimony of Fentress and the exhibit, the undersigned makes the following findings of fact.

Fentress lives in Oakland, Nebraska. (Testimony) Oakland is located between Omaha, Nebraska and Sioux City, Iowa. (Testimony) Fentress was employed by Aventure Staffing, when on August 14, 2018, he sustained injuries to his right and left shoulders, both wrists, and his back. (Testimony; App. for Alt. Care). The care at issue here is for his left shoulder and both wrists. (Testimony; App. for Alt. Care).

The defendants accepted liability for the injuries. (Testimony) The defendants authorized care for the injuries. (Testimony) Fentress was assigned a nurse case manager. (Testimony)

Fentress underwent surgery on his left shoulder, recovery from which included physical therapy. (Testimony; Ex. 1; App. for Alt. Care) The defendants authorized Fentress to receive physical therapy at Tri-State Specialists, which is located in Sioux City, a drive of about 98 miles round trip from Fentress's home. (Testimony; Ex. 1; App. for Alt. Care)

Winter weather and flooding have caused Fentress to miss physical-therapy appointments because of the distance of his commute. (Testimony) Fentress testified credibly that he dislikes missing physical therapy appointments. (Testimony) He believes that the physical therapy is helping him to build strength in his surgically repaired shoulder. (Testimony) Fentress feels that missing appointments sets him back in his attempt to recover from the injury to his shoulder and the surgery to repair it. (Testimony)

Fentress informed the defendants of his dissatisfaction with the location of his physical therapy provider. (Ex. 1; Testimony) Fentress expressed dissatisfaction with the 98-mile commute round trip to attend physical therapy at Tri-State Specialists. (Ex. 1; Testimony) He also requested authorization to attend physical therapy closer to home. (Ex. 1; Testimony) Specifically, Fentress requested that the defendants authorize him to participate in physical therapy with a provider in Tekamah, Nebraska, which is approximately 15 miles from his home. (Ex. 1; Testimony) Fentress would commute about 30 miles round trip if the defendants allowed him to undergo physical therapy in Tekamah, which is approximately 68 miles less than his drive round trip to Tri-State

Specialists in Sioux City. Fentress testified that the defendants would not authorize him to undergo physical therapy elsewhere because they would have to pay for another assessment in order for him to do so. (Testimony)

Fentress testified that he was diagnosed with carpal tunnel syndrome in his wrists. (Testimony) He was prescribed physical therapy for this condition. (Testimony) Prior to hearing, the defendants authorized Fentress to participate in physical therapy closer to his Oakland residence than Sioux City. (Testimony)

Fentress underwent an evaluation with Dr. Wampler (no first name found in evidence) on or about April 8, 2019. (Testimony) On approximately April 15, 2019, the nurse case manager with whom Fentress had worked with emailed him to inform him that his medical appointments were cancelled and that she had been instructed to close his case. (Testimony) She did not inform Fentress why she had been so instructed, but directed him to contact the claims adjuster if he had any questions. (Testimony) As of the hearing on the application for alternate care, nobody had informed Fentress why the defendants had apparently cancelled his medical care. (Testimony) The cancellation of Fentress's medical care includes physical therapy for his left shoulder and both wrists. (Testimony)

CONCLUSIONS OF LAW

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769 (Iowa 2016) (citing *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 195, 197 (Iowa 2003)). Under the law, the employer must "furnish reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 490 (Iowa 2003) (emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code § 85.27(4).

An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care." *Id.* "Determining what care is reasonable under the statute is a question of fact." *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995); *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. *Id.* at 124; *Gwinn*, 779 N.W.2d at 209; *Reynolds*, 562 N.W.2d at 436; *Long*, 528 N.W.2d at 124. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. *Id.*

The distance of the injured employee's commute to receive authorized care may amount to an undue inconvenience that makes the care unreasonable under Iowa Code section 85.27(4). See *Trade Prof'ls, Inc. v. Shriver*, 661 N.W.2d 119, 124 (Iowa 2003); see also *Warner v. City of Hawarden*, File No. 5039478 (Arb. June 27, 2013). The Iowa Supreme Court has found that requiring an injured employee to travel 100 miles to receive care (i.e., 200 miles round trip) appears unreasonable. See *id.* The agency has found care within a 50-mile radius (i.e., 100 miles round trip) to be generally reasonable. *Bitner v. Cedar Falls Const. Co.*, File No. 5013852 (Alt. Care Sept. 24, 2004). The agency has also concluded that 120 miles of round-trip travel is excessive. See *Shrock v. Corker Waste Disposal, Inc.*, File No. 1133725 (Alt. Care June 26, 1996). But these are general rules with the facts determining what is reasonable in each case. See *Warner*, File No. 5039478, at pp. 12–14; see also *Long*, 528 N.W.2d at 123.

The care in question is not a doctor with a specialty that is difficult to find in closer proximity to Fentress. Rather, the care in question is physical therapy and there are providers located closer to Fentress's residence. Further, the defendants have authorized physical therapy for Fentress's wrist injuries closer to his home than Sioux City. Fentress has already established care for physical therapy with a provider closer to his residence that is acceptable to the defendants.

Moreover, the distance of the commute has been a factor that has caused Fentress to miss physical therapy appointments. When combined with bad weather, flooding, and illness, the travel distance has caused Fentress to miss appointments. Fentress testified credibly that he believes these missed appointments set him back in his recovery from surgery. The negative impact on the ability of Fentress to attend appointments in Sioux City has made the care chosen by the defendants less effective than it might have been had the provider been located closer to where Fentress lives.

Fentress has met his burden of proof. Under the circumstances of this case, requiring Fentress to travel approximately 98 miles for physical therapy is an undue inconvenience that is unreasonable. He is authorized to seek physical therapy from a provider located closer to his residence, such as the one in Tekamah, Nebraska.

ORDER

It is therefore ordered:

- 1) Fentress's application for alternate care is **granted**.
- 2) Fentress shall receive physical therapy for his left shoulder injury and wrists at a provider closer to his residence in Oakland than Tri-State Specialists in Sioux

City, such as the provider located in Tekamah, Nebraska.

Signed and filed this 19th day of April, 2019.



BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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