

plateau fracture by J. L. Marsh, M.D. at the University of Iowa Hospitals and Clinics. Dr. Marsh noted the claimant's recovery was slow and considered realignment surgery or a total knee replacement. On June 14, 2006, Dr. Marsh indicated that when he would see the claimant in the fall, new x-rays would be taken and then Dr. Marsh would carefully consider whether the claimant was at maximum medical improvement if surgery was not going to be performed.

However, Dr. Marsh placed the claimant at maximum medical improvement on November 8, 2006 with no reference to consideration of x-rays or total knee replacement. On January 10, 2007, the claimant underwent an independent medical evaluation by Thomas J. Hughes, M.D., an occupational medicine physician at claimant's attorney's request. Dr. Hughes indicates that the claimant would substantially benefit from a total knee replacement and that in his opinion it would be beneficial to perform that procedure sooner rather than later so that claimant would obtain the benefit during his productive years.

Debbie Warmke-Eide indicates that Dr. Marsh wants to see claimant once a year in follow-up as claimant eventually will require a total knee replacement perhaps as soon as two years and that in Dr. Marsh's opinion it would be better to wait two years or up to ten years due to claimant's young lifespan.

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 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 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; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

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 Number 694639 (Review-Reopening decision June 17, 1986).

Dr. Marsh has expressed at times concern about proceeding with a realignment surgery. However, on June 14, 2006, Dr. Marsh's notes indicate that he was considering surgery consisting of a total knee replacement after review of x-rays in the fall of 2006. Nevertheless, his next notes do not refer to either. It is noteworthy that Dr. Marsh never placed the recommendation to wait for two to ten years for surgery in his notes or even in a letter to counsel. At the beginning of the hearing defense counsel indicated that the defendants were waiting for an opinion from Dr. Marsh on whether claimant should have surgery now rather than later.

Dr. Hughes supports surgery now for good reason. Denying the claimant surgery to treat his injury essentially denies the claimant reasonable and necessary care to treat the claimant's injury. It denies the claimant the opportunity to fully rehabilitate and return to the workforce. Those opportunities are the paramount intent of the workers' compensation statute.

It appears from this record that Dr. Marsh was of the opinion that the claimant was ready for a total knee replacement but for some reason he did not schedule the claimant for such a surgery. The record does not show that the failure to schedule the surgery was the result of interference in medical judgment which entitle the claimant to alternate care.

The claimant needs to have another appointment with Dr. Marsh at which time Dr. Marsh needs to indicate whether he will perform surgery consisting of a total knee replacement at this time. The claimant testified that he did not know that he could request such an appointment. He can and defendants must provide such an appointment immediately. If Dr. Marsh agrees that claimant needs an immediate total knee replacement and such is not provided or if Dr. Marsh does not agree, another alternate care proceeding can be filed.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care consisting of a total knee replacement is denied.

Signed and filed this 8th day of March, 2007.

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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