IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RICHARD HUFF, Petitioner, v. CRST EXPEDITED, INC., a/k/a CRST INTERNATIONAL, & AIG INSURANCE COMPANY, Respondents.	Case No. CVCV054578 **ORDER ON JUDICIAL REVIEW**

Petitioner Richard Huff (Richard) filed a Petition for Judicial Review (the Petition) on January 22, 2020. Richard seeks judicial review of a remand decision by a deputy workers' compensation commissioner (the Deputy)[1] entered on 12/13/19.

Telephonic oral argument was held on December 18, 2020. Appearing for Richard was attorney Rebecca Saffin Parrish-Sams. Appearing for Respondents CRST Expedited, Inc. a/k/a CRST International and AIG Insurance Company (together, CRST) was attorney Dillon Carpenter for Chris Scheldrup. Oral argument was not reported.

Upon review of the court file and the administrative record in light of the relevant law, and after careful consideration of the respective arguments of counsel, the court finds the following facts, reaches the following conclusions and enters the following Order affirming the remand decision and dismissing the Petition for the following reasons.

[1] This Deputy has presided over the many hearings that have occurred since Richard's March 24, 2016, work-related injury regarding Richard's workers' compensation related issues.

BACKGROUND FACTS AND PROCEEDINGS

Richard was an over the road truck driver for CRST. He and his driving partner elected to live in the truck. (06/19/17 Hearing Trans. at 5-6; JEx. 24 at 5-6). This was not a condition of Richard's employment with CRST.

This case arises from work-related injuries Richard sustained on April 24, 2016, when he collided with another truck. (06/09/17 JEx. 24 at 8). He suffered a broken nose, lost several teeth, and sustained a crush injury to his right leg below the knee. (06/09/17 Hearing Trans. at 9; JEx. 24 at 9). His driving partner, who was in the passenger seat, was killed. (06/09/17 Hearing Trans. at 8; JEx. 24 at 8). He has had several surgeries on his right leg. (06/09/17 Hearing Trans. at 10-11; JEx. 24 at 10-11). Additional surgery to repair Richard's right leg is contemplated at some point if Richard complies with his doctor's requests that he quit smoking and makes other health related lifestyle changes.

On May 26, 2017, Richard filed an application for alternate medical care, requesting that the agency order CRST to provide him (1) a handicap accessible/ADA compliant living arrangement near Lithia Springs, Georgia; (2) a handicap van or alternative means of transportation for any and all reasonable purposes; and (3) a home healthcare provider and/or in-home community-based ADL assistance." (05/26/17 Alt. Med. Care Appl. I at 1, ¶ 5).

The hearing on Application I was held by telephone on June 8 or 9, 2017. (05/31/17 Hearing Notice; 06/09/17 Hearing Trans. at 1; JEx. 24 at 1). Petitioner's Exhibit 1 (07/29/16 Dickerson assessment) and Respondent's Exhibit A (CRST treating doctors' letters and medical notes) were admitted without objection. Richard testified.

Sara Palmer, a nurse case manager for Richard, testified for CRST. No other evidence was submitted by either party.

On June 12, 2017, the agency entered a decision denying Application I. The agency found "none of [Richard's] current medical providers have opined that [Richard] needs an accessible apartment, accessible van, or home health aide services at this time," and Richard failed to meet his burden of proof. (06/12/17 Alt. Med. Care Dec. I at 6, ¶¶ 4-5).

Richard sought rehearing on July 3, 2017. (07/03/17 Rehearing Appl.). CSRT resisted. (07/12/17 Resistance). The agency denied Richard's application by docket entry on the application on July 12, 2017. (07/03/17 Rehearing Appl. at 3).

On July 21, 2017, Richard filed a second, nearly identical Application for Alternate Medical Care (Application II). (07/21/17 Alt. Med. Care Appl. II). In Application II he requested that CRST be ordered to provide him with "(1) a wheelchair accessible/ADA compliant living arrangement near Lithia Springs, Georgia (near authorized treating physician Dr. Terrell, who is now 3+ hours away); (2) a handicap van or alternative means of transportation for any and all reasonable ADLs; and (3) home healthcare and/or in-home community-based ADL assistance." (07/21/17 Appl. for Alt. Med. Care II at 1, ¶ 5).[2] CRST filed a response on August 3, 2017, citing lack of corroborating authority for Richard's requests. (08/03/17 Response to Appl. for Alt. Med. Care II).

A telephone hearing on Application II was set for August 3, 2017. (08/03/17

[2] On July 21, 2017, Richard filed a Petition for Judicial Review of Application I. (07/21/17 Pet. for Jud. Rev. I).

Hearing Notice). During the hearing on Application II, Richard's attorney clarified his requests for relief. His counsel asked that CRST be ordered to (1) help Richard locate a wheelchair-accessible living situation and pay the difference between his most recent rent of $370.00 a month and the more expensive cost of wheelchair-accessible housing, (2) make a medical transportation service available once a week so Richard can go to the grocery store for groceries, and (3) supply "someone to come provide some services." (07/03/17 Trans. at 1-14; JEx. 24 at 78-79). Petitioner's Exhibits 1-5 and Respondent's Exhibits A-C were admitted.[3] (07/03/17 Trans. at 4-6, 24; JEx. 24 at 69-71; 89). No further evidence was offered by either party, counsel for the parties provided argument, and the case was submitted.

On August 4, 2017, the agency issued its second decision. The decision noted that home modifications, modified vehicles, transportation, and nursing services may be covered expenses under Iowa Code section 85.27, as set forth in *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 154-58 (Iowa 1996), but finding that unlike the facts presented in *Ciha*, none of Richard's current medical providers had opined that Richard needed (1) a wheelchair accessible/ADA compliant living arrangement near Lithia Springs, Georgia (near ATP Dr. Terrell, who is now over three hours away); (2) a handicap van or alternate means of transportation for any and all reasonable ADLs; or (3) home healthcare and/or in-home community-based ADL assistance. (08/04/17 Alt. Med. Care Dec. II at 6-7).

Richard filed an application for rehearing on August 24, 2017. (08/24/17 Rehear.

[3] At least two of these exhibits were exhibits offered and admitted at the first alternate care hearing. (07/21/17 Hearing Trans. at 4; JEx. 24 at 69).

Appl. on Alt. Med. Care Dec. II). The agency denied this request by docket entry on the application on August 25, 2017. (08/24/17 Rehear. Appl. at 2).

On September 6, 2017, Richard sought judicial review of the agency's denial of Application II. (09/06/17 Pet. for Jud. Rev. II). On September 19, 2017, he filed a motion to consolidate both judicial review proceedings and reset the briefing schedule under one consolidated proceeding. (09/19/17 Motion to Consol. and Reset Hear. Sched.) The district court filed an Order consolidating the Applications on September 27, 2017. (09/27/17 Order to Consolidate).

The district court heard oral argument on both petitions for judicial review on December 19, 2017. On February 6, 2018, the district court entered a merits Order reversing the agency. The court determined that evidence from a medical provider is not required for Richard's requests for alternate medical care to be considered by the agency. The court further found that Richard's requests for handicap-accessible housing, transportation, and an in-home aide were allowable "appliances" or "services" under the court's interpretation of section 85.27(1). (02/06/18 Ruling and Order on Pet. for Jud. Rev. at 13-19).

CRST appealed the district court's ruling. (02/23/18 Notice of Appeal). The Iowa Supreme Court transferred the case to the Iowa court of appeals. On March 6, 2019, the court of appeals issued a decision affirming in part, reversing in part, and remanding the case to the agency. *Huff v. CRST Expedited, Inc.*, No 18-0336, 2019 WL 1056812, at *4 (Iowa Ct. App. Mar. 6, 2019).

The court of appeals found that while medical evidence is normally required for a workers' compensation claim, no provision of law requires the claimant to provide

medical evidence to support a request for alternate medical care or that the care provided by the employer is unreasonable. *Id.* at *1, *4. The court concluded "the lack of medical evidence is not a bright-line bar to an award of alternate-medical-care benefits." *Id.* at *1, *4. However, the court of appeals found the district court's "determination that the specific appliances and services [Richard] requests are available to him relies on factual findings that must be made by the agency." *Id.* at *1, *4. The court remanded the case to the agency with directions to make the factual determinations on each of Richard's requests without requiring that each request be supported by medical evidence. *Id.* at *1, *4.

Richard filed a motion to for briefing on remand to the agency. (06/06/19 Motion to Permit Brief. Remand Issues). CRST filed a response and cross motion to present additional evidence. (06/12/19 Resp. to Motion and Cross Motion for Consider. of Addl. Evid. on Remand). On June 26, 2019, the agency granted Richard's motion and denied CRST's motion.

The agency reconsidered the established administrative records on Application I and Application II in light of the court of appeals' guidance in *Huff*. On December 13, 2019, the agency issued a remand decision constituting final agency action in this matter. (12/13/19 Remand Dec.).

In this decision, the agency made factual findings including the following: Richard owned a home and an automobile prior to his work injury. (12/13/19 Remand Dec. at 3). Richard gave his personal automobile to his son before his work injury. (12/13/19 Remand Dec. at 3). At the time of his work injury Richard did not own a home or a vehicle and lived periodically in CSRT's truck. (12/13/19 Remand Dec. at 3).

Richard completed his activities of daily living at a local Wal-Mart or truck stop while he was living out of CRST's truck. (12/13/19 Remand Dec. at 3). He paid taxicabs for transportation when he traveled to locations away from Wal-Mart or the truck stop, and he often ate fast food. (12/13/19 Remand Dec at 3).

Ultimately, the agency denied each of Richard's requests for a van or other transportation for activities unrelated to his medical treatment, a home healthcare provider or community-based assistance with activities of daily living, and assistance finding and securing an apartment. (12/13/19 Remand Dec. at 18-22).

Richard filed an application for rehearing on December 31, 2019. (12/31/19 Appl. for Rehearing). The agency denied his application in a one-word docket entry on January 2, 2020. (01/02/20 Denial Order).

Richard filed the Petition on January 22, 2020. (01/22/20 Pet.).

STANDARD OF REVIEW

Iowa Code chapter 17A governs judicial review of administrative agency actions. The district court acts in an appellate capacity to correct errors of law on the part of the agency and applies the standards set forth in Iowa Code section 17A.19. *Meyer v. IBP, Inc.,* 710 N.W.2d 213, 219 (Iowa 2006); *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985). The district court's review is limited to correction of errors at law and is not de novo. *Harlan v. Iowa Dep't of Job. Serv.*, 350 N.W.2d 192, 193 (Iowa 1984). The court has no original authority to declare the rights of the parties. *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in administrative law cases are won or lost at the agency level. *Iowa-Ill. Gas & Elec. Co. v. Iowa State*

Commerce Comm'n, 412 N.W.2d 600, 604 (Iowa 1987). Judgment calls are to be left to the agency. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

The court may affirm the final agency action or "may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria in section 17A.19(10)(*a*) through (*n*)." Iowa Code § 17A.19(10); *Burton v. Hilltop Care Ctr.,* 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utils. Bd.,* 805 N.W.2d 758, 762 (Iowa 2011)).

Where an agency has been "clearly vested" with a fact-finding function, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial review"—that is, whether it involves an issue of (1) findings of fact, (2) interpretation of law, or (3) application of law to fact. *Burton,* 813 N.W.2d at 256.

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact." *Meyer*, 710 N.W. 2d at 219. "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'" *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(*f*)). A district court's review "is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Id*. However, "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a "fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal v. Annett Holdings, Inc.,* 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

> Substantial evidence is
>
> the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of the fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(*f*)(1).

The agency's findings are binding on appeal unless a contrary result is required as a matter of law. *Long v. Robertson Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995). The court is not free to interfere with the agency's findings where there is conflict in the evidence or when reasonable minds might disagree about the inferences to be drawn from the evidence, whether disputed or not. *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 509 (Iowa 1973).

When assessing whether an agency decision is supported by substantial evidence, a reviewing court must "accord deference to the agency's decision on witness credibility." *Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all the relevant evidence in the record, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(*f*)(3).

The application of law to facts is likewise vested in the discretion of the agency. *Tremel v. Iowa Dep't of Revenue*, 758 N.W.2d 690, 693 (Iowa 2010) (citing *Iowa AG Constr. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 174 (Iowa 2006)); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004) (citing Iowa Code §

17A.19(10(*f*)). The application of law to facts can be affected by other grounds of error such as erroneous interpretation of law; irrational reasoning; failure to consider relevant facts; or irrational, illogical or wholly unjustifiable application of law to the facts. *Meyer*, 710 N.W.2 d at 218-19; Iowa Code § 17A.19(10)(*c*), (*i*), (*j*), (*m*). A decision is "irrational" when it is not governed by, or according to, reason. *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010) (citations omitted). A decision is "illogical" when it is contrary to, or devoid of, logic. *Id.* A decision is "unjustifiable" when it has no foundation in fact or reason. *Id.*

The court allocates some degree of discretion to the agency in its review of this question, but not the scope of discretion given to the agency's findings of fact. *Id. See also* Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, at 70 (1988) ("[W]hen an agency is delegated discretion in applying a provision of law to specified facts the scope of review appropriately applied by courts must be deferential because the legislature decided that the agency expertise justifies vesting primary jurisdiction over that matter in the discretion of the agency rather than in the courts."). Further,

> [G]iven that the factual determinations in workers' compensation cases are 'clearly vested by a provision of law in the discretion of the agency,' it follows that application of the law to those facts is likewise 'vested by a provision of law in the discretion of the agency.'

Mycogen Seeds, 686 N.W.2d at 465 (citing Iowa Code § 17A.19(10)(*f*)).

When an agency exercises its discretion based on an erroneous interpretation of the law, the court is not bound by those legal conclusions and "may correct

misapplications of the law." *Stroup v. Reno*, 530 N.W.2d 441, 443 (Iowa 1995). If the claim of error "lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." *Meyer*, 710 N.W.2d at 219. In other words, the court will only reverse the agency's application of law to the facts if "it is 'irrational, illogical, or wholly unjustifiable.'" *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007)). In such instances, the court may substitute its interpretation of the law for that of the agency. Iowa Code §§ 17A.19(10)(*c*), 17A.19(11)(*b*); *Mycogen Seeds*, 686 N.W.2d at 464; *Meyer*, 710 N.W.2d at 218-19).

The agency's findings have the force of a jury verdict. *Holmes v. Bruce Motor Freight Inc.,* 215 N.W.2d 296, 298 (Iowa 1974). The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. Iowa Code § 17A.19(8)(*a*).

APPLICABLE LAW

The parties focus their arguments on portions of two subsections of section 85.27, one agency rule, and interpretive case law.

A. <u>Statutory provisions</u>. Section 85.27 relevantly provides:

> **85.27 Services – release of information – charges – payment – debt collection prohibited**.
>
> 1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services.

> The employer shall also furnish reasonable and necessary crutches, artificial members and *appliances* . . .
> . . . .
>
> 4. For purposes of this section, the 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.

Iowa Code §§ 85.27(1), (4), (5) (emphasis added).

B. <u>Administrative rule</u>. The word "appliance" is defined by Iowa Administrative Code rule 876-8.5:

> Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.
>
> Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

Iowa Admin. Code r. 876-8.5.

C. <u>Interpretive case law</u>. Richard contends his requests for handicap accessible housing, transportation and housekeeping assistance are all "appliances" CRST should provide him. The Iowa Supreme Court (the Court) has addressed the definition of appliance in at least three cases: *Manpower Temporary Services v. Sioson*, 529 N.W.2d 259 (Iowa 1995); *Quaker Oats v. Ciha*, 522 N.W.2d 143 (Iowa 1996), and *Stone Container Corp. v. Castle*, 657 N.W.2d 485 (Iowa 2003).

i. *Siosin*. In *Siosin*, the question for the Court to answer was whether the employer's workers' compensation insurance carrier was obligated to provide, convert and equip a van for the injured worker who became a quadriplegic as a result of her

work related injury. *Id.* at 260. In ultimately determining under the extremely rare factual circumstances provided in *Siosin* that a van was an appliance, the Court said:

> We begin with unusually strong medical evidence of necessity and the record that [Siosin's] family status and past lifestyle reveal no other use for the van. That evidence refutes any contention that the van is a frill or luxury and reveals what can be described as an appliance, not greatly different from crutches or a wheelchair. The point is that a van is necessary in order to make [Siosin's] wheelchair fully useful.
>
> In another context, like other courts, we have agreed with the dictionary definition that describes the term "appliance" as "a means to an end." *Murray v. Royal Indem. Co.*, 247 Iowa 1299, 1301, 78 N.W.2d 786, 787 (1956). The "end" of the van is merely an extension of [Siosin's] 300-pound wheelchair. Without a van she is, more than need be, a prisoner of her severe paralysis. The commissioner could thus reasonably view the van as an appliance, a necessary part of Miya's care.

Siosin, 529 N.W.2d at 264.

ii. *Ciha*. In *Ciha*, the injured worker was rendered a quadriplegic in a work related motorcycle accident. *Id.* at 147. Because the severity of his disability left him unable to be mobile without a wheelchair, Ciha sought "expenses for home modifications, van conversion, and home nursing services" from his employer's workers' compensation carrier. *Id.* at 154. The Deputy concluded "the home modification expenses incurred by Ciha 'related to items designated to substitute for function lost in [his] work injury.'" *Id.* In affirming the Deputy's decision on intra-agency appeal, the Commissioner said:

> [Ciha's] need for a ramp to enter his home, and for a special shower designed to accommodate a wheelchair, are held to be necessary and reasonable medical expenses. All of the items are related to accommodating [Ciha's] wheelchair. An appliance has been held to be a device that serves to replace a physical function lost by the injury. [Iowa Admin. Code r. 343-8.5 (1996)]. Just as wheelchair seeks to replace the lost functions of standing and walking, a wheelchair ramp, a wheelchair shower, etc. also seek to replace physical functions claimant possessed

before the work injury but has now lost.

Id. The Court ultimately concluded that the Commissioner's conclusion was sound. *Id.* at 156. The Court found the home modifications and van conversion were "'other artificial device[s]' constructed to provide 'function' for Ciha. As in *Siosin*, we believe the specific home modifications and van conversion are merely are merely an extension of Ciha's wheelchair." *Id.* (citing *Siosin*, 529 N.W.2d at 264).

iii. *Castle*. The worker in *Castle* suffered catastrophic injuries, including "los[ing] both legs at the hip joint, as well as his buttocks, rectum and a testicle. *Castle*, 657 N.W.2d at 487. His injuries required him to spend most of his time in his room at a skilled nursing and rehabilitation center where he lived. *Id.* at 487-88. His employer's workers' compensation carrier provided Castle with a laptop post injury, which he used to complete several online college courses. *Id.*

Castle asked his employer for a replacement computer when the original computer quit working. *Id.* In support of the request he said it would help him in "his educational pursuits, rehabilitation pursuits, and the computer . . . would serve . . . to replace function he has lost . . . due to his injuries. *Id.*

Under this factual scenario, the Court said:

> The employer argues "the evidence in this case was of inferior quality" because "[n]o qualified medical provider expressed the opinion that Castle needed a computer." It does not take a qualified medical provider to make apparent the effect on Castle of his undeniable injuries. Nor is testimony from a "qualified medical provider" required to allow the deputy to conclude that a computer would replace, electronically, the function lost by Castle as a result of his injuries, the ability to physically move about the world. We conclude, therefore, that the agency's decision does not lack the necessary factual support simply because Castle did not have any medical testimony, in addition to that offered by his occupational therapist, to support his application.

Id. at 492.[4]

ANALYSIS

As noted above, Richard presents three issues regarding the agency's factual determinations, interpretation of the law, and application of the law to the facts in the remand decision. First, the agency erred in not ordering CRST to provide Richard wheelchair accessible transportation. Second, the agency erred in not ordering CRST to secure wheelchair accessible housing for Richard and to pay the increased monthly rent differential for said housing. Third, the agency failed to rule on Richard's request that the agency order CRST to either (1) have a physician confirm whether the recommendations contained in a CRCG-AAA assessment of Richard were reasonable and necessary to restore Richard's lost function, or (2) obtain its own assessment of Richard's wheelchair accessibility needs. (Pet. Jud. Rev. Brief at pp. 24, 30, 34).[5]

Upon reviewing the remand record, the court concludes (1) the fact finding by the agency reflected in the remand decision is reasonable and supported by substantial evidence in the record when that record is considered as a whole, (2) the agency's interpretation of the relevant statutory and rule provisions does not contain errors of law, and is not affected by irrational reasoning, or a failure to consider relevant facts, (3) the agency's application of law to the facts is not irrational, illogical, or wholly

[4] The Deputy in her decision also discusses an unpublished 2006 Iowa court of appeals decision, *Coop v. John Deere Des Moines Works*, No. 06-0893, 2006 WL 3615011 (Iowa Ct. App. Dec. 13, 2006).

[5] Richard reasserts the same grounds he urged on judicial review of the two agency decisions on Applications I and II, asserting here the additional ground stated in 17A.19(10)(*f*)(lack of substantial evidence).

unjustifiable, (4) the agency did not fail to consider a relevant and important matter related to the propriety of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action, and (5) the agency's decision is not characterized by an abuse of discretion or an unwarranted exercise of discretion and for the following reasons.

A. Requirements for alternate medical care under section 85.27. Employers have a duty to provide medical care that is prompt, reasonably suited to treat the injury, and without undue inconvenience to the employee. Iowa Code § 85.27(4); *West Side Transp. v. Cordell*, 601 N.W.2d 691, 693 (Iowa 1999). The employee bears the burden of proving the care authorized by the employer is unreasonable. *R. R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 196 (Iowa 2003). "[T]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability." *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 437 (Iowa 1997).

Whether the care provided is reasonable is a question of fact. *Long*, 528 N.W.2d at 123. Medical evidence is not required to establish that the requested alternate medical care is necessary. *Castle*, 657 N.W 2d at 492. The employer retains the right to choose the provider of care, except when the employer has denied liability for the injury. Iowa Code § 85.27(4).

If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Iowa Code § 85.27(4). If the employer

and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefor, allow and order other care." Iowa Code § 85.27(4).

B. Richard's request for a handicap van or alternate means of transportation. In Application I, Richard asked that CRST be ordered to purchase "a handicap van or alternative means of transportation for any and all reasonable purposes." (12/13/19 Remand Dec. at p. 18, ¶ 2). In Application II, Richard asked that CRST be ordered to purchase "a handicap van or alternative means of transportation for any and all reasonable ADLs." (12/13/19 Remand Dec. at p. 18, ¶ 2). During the second hearing, Richard's attorney clarified his request for care in that regard, asking that CRST be ordered to make CRST's medical "transportation service available once a week so he can go to the grocery store and buy groceries." (12/13/19 Remand Dec. at p. 18, ¶ 2). On this issue, the agency determined:

> 1. Handicap Van or Alternate Means of Transportation
>
> . . . .
>
> Siosin and Ciha both developed quadriplegia as a result of their work injuries requiring them to use wheelchairs for mobility. As a result of his work injury Castle's legs were amputated at the hip joint as well as his buttocks, rectum, and a testicle. Castle developed skin problems as a result of his work injury that prevented him from being able to sit and use a wheelchair so he used a "prone cart" that permitted him to lie on his stomach and chest. As a result of her work injury, Coop also required the use of a wheelchair for mobility. Huff suffered a serious injury to his right leg. He did not sustain paralysis as a result of his work injury.
>
> In Siosin, considering whether a modified can constituted medical care, an appliance or transportation contemplated by the statute, the court noted "[a]lthough factual situations supporting such a finding would be extremely rare, we, like the district court, agree that the commissioner

could find one here. Sioson, 529 N.W.2d AT 263. The "extremely rare" circumstances found in Sioson are not present in this case.

Unlike Sioson, who relied on walking, riding a bike, and taking public transportation before her work injury, Huff owned and drove a vehicle, like Ciha and Coop before his work injury. Huff elected to give his vehicle to his son. He then used the truck owned by CRST and he paid taxi cabs for transportation to places where he could not take CRST's truck.

Ciha purchased a van and had it modified after attending a driving evaluation at Craig Hospital. Ciha, 552 N.W.2d at 148. Ciha used the van for transportation to and from work because public transportation was not available to afford him the opportunity to work full-time. *Id*. The commissioner declined to award Ciha the cost of the van, but ordered Quaker Oats to pay for the cost of van modifications recommended by Craig Hospital to Ciha. Id. at 154.

Coop owned a Ford Escort before her work injury and testified she needed a van to take her to medical appointments. Coop, 2006 WL 3615011 at *1. John Deere paid for the modifications to both of her vans, but refused to pay for the cost of the van she purchased in 1991 and the van she purchased in 2001. Id. Coop filed an application for alternate medical care requesting Quaker Oats be ordered to pay for the cost of the two vans. Id. The deputy workers' compensation commissioner denied her request, finding there was no evidence the vans were medically necessary, and Coop did not "present evidence to show the type of 'extremely rare' situation [w]here an employer would be required to provide a claimant with a van as a reasonable and necessary appliance." Id. at 2.

Huff's lack of a vehicle or need for a vehicle was not caused by his work injury. Huff did not have a vehicle because he gave his vehicle away to his son before his work injury. Huff could have purchased any vehicle following the work injury; he did not. Certainly if Huff needed modifications to a vehicle because of his inability to use his leg or legs because of the work injury, such as hand controls, or some other modification or modifications recommended by someone capable of assessing his need for such modifications recommended and installed inn Ciha, such a request would be reasonable and necessary. No such evidence was presented at either hearing. Huff paid taxi cabs to obtain food and other necessities before his work injury after he gave his vehicle to his son. There was no evidence presented at hearing that Huff was unable to use a taxi cab or other vehicle for transportation, or that he requires a special van or other vehicle for transportation as a result of his work-related injury.

> There was no evidence presented at hearing Huff experienced transportation difficulties to his medical appointments. When Huff requested his care to be transferred to Dr. Terrell, who is located several hundred miles away, CRST granted his request and has arranged and paid for his transportation to his appointments with Dr. Terrell and for all other medical providers and medically necessary medication and treatment. Huff's request CRST be ordered to provide a van or other transportation for other activities unrelated to his medical treatment is not reasonable and necessary, and is denied.

(12/13/19 Remand Dec. at pp. 18-20).

The Deputy reasonably found that, while Richard's leg injury was serious, the extent of his injuries were not as severe as those sustained by the claimants in *Sioson*, *Ciha*, and *Castle*, because he was not paralyzed, a quadriplegic, or forced to use a prone cart. This fact takes him out of the "extremely rare" category in play in *Siosin*.

The Deputy also reasonably found that Richard's lack of a vehicle was not a result of his work injury. He gave his car to his son when he went to work for CRST. He did not attempt to purchase any kind of vehicle after he was injured. The Deputy observed that modifications to such a vehicle could be reasonable and necessary.

The Deputy further reasonably found that unlike the claimants in the cases cited, Richard used taxicabs before his injury to purchase food and other necessities. The Deputy could reasonably find from Richard's own testimony at the hearing on Application I that he currently has access to transportation and he uses this transportation. (08/09/17 Hearing Trans. at 19, 26-27; J.Ex. 24 at 19, 26-27). The record reasonably supports the Deputy's findings that Richard did not establish he could not use taxicabs or that he needed a special vehicle to transport him as a result of his work-related injury.

Further, Richard confirmed he has no difficulty with transportation to his medical appointments. (06/09/17 Hearing Trans. at 40-42). Instead, the record reflects that when Richard has requested transportation to medical appointments, CRST has granted his requests. (06/09/17 Hearing Trans. at 40-42). Richard characterized RN Sara Palmer, CRST's appointed case manager for Richard as "very good at her job. If I have a problem, she will get it taken care of." (06/19/17 Hearing Trans. at p. 42; JEx. 24 at 42). CRST arranged and paid for Richard's transportation to medical appointments. (06/09/17 Hearing Trans at 40-42; JEx. 24 at 42).

For all of these reasons, the agency reasonably found Richard's request that he be provided a van or other transportation for activities unrelated to his medical treatment not reasonable and necessary. This finding is supported by substantial evidence in the record when it is considered as a whole. The agency's interpretation of the relevant statutory and rule provisions does not contain errors of law, and is not affected by irrational reasoning, a failure to consider relevant facts, or an irrational, illogical and wholly unjustifiable application of law to the facts. The agency did not fail to consider a relevant and important matter related to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action. Nor is the agency's decision characterized by an abuse of discretion or an unwarranted exercise of discretion. The agency decision on this issue should be affirmed.

C. Richard's request for assistance locating, securing, and paying for an apartment. Richard made several housing related requests to CRST. First, Richard requested that CRST be ordered to pay for a wheelchair accessible housing

arrangement near an authorized medical provider in Lithia Springs, Georgia. (05/26/17 Alt. Med. Care Appl. I at ¶ 5). During the second alternate care hearing, Richard's attorney clarified this housing related request and asked that CRST be ordered to help Richard locate a wheelchair-accessible living situation and pay the difference between his most recent rent amount of $370.00 per month and the more expensive cost of wheelchair accessible housing. (07/21/17 Hearing Trans. at 13-15; JEx. 24 at 78-80). Each of these requests was denied by the agency in the remand decision under the following analysis:[6]

> 3. Wheelchair Accessible/ADA Compliant Housing
>
> Before his work injury Huff lived in a home until his home went through a foreclosure proceeding. After the foreclosure proceeding Huff elected to live out of the truck he drove that was owned by CRST. In his first and second applications for alternate medical care Huff requested CRST be ordered to pay for a wheelchair accessible/ADA compliant living arrangement near Lithia Springs, Georgia near Dr. Terrill. During the second hearing, Huff's attorney clarified his requested care, asking CRST be ordered to help him locate a wheelchair-accessible living situation and pay the difference between this most recent rent of $370.00 a month and the more expensive cost of wheelchair-accessible housing.

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[6] Richard implies in his judicial review brief that the district court's findings in the February 6, 2018, judicial review decision should be binding on the district court on remand. They are not. As noted above, in *Huff v. CRST Expedited, Inc.*, No. 18-0336, 2019 WL 1056812, at *1 (Iowa Ct. App. Mar. 6, 2019), the court said:

> The court's determination that the specific appliances and services [Richard] requests are available to him relies on factual findings that must be made by the agency. Because the agency used the wrong legal standard, the case must be remanded for the agency to make factual determinations notwithstanding the lack of medical evidence to support his requests.

Huff v. CRST Expedited, Inc., No. 18-0336, 2019 WL 1056812, at *1 (Iowa Ct. App. Mar. 6, 2019).

During the first hearing Huff requested assistance with relocation to the Atlanta area. His testimony conflicts with his later representations to George that he wanted to remain in Statesboro. (Ex. 4). There is no evidence Huff needs to move to the Atlanta area for treatment of his medical condition caused by his work injury. I do not find Huff's request CRST pay for the cost of relocation reasonable and necessary.[7]

Ciha requested and Quaker Oats paid for modifications to Ciha's home when he returned from Craig Hospital requiring the use of a wheelchair as a result of his quadriplegia. Certainly home modifications necessitated by the use of a wheelchair or other assistive device can be reasonable appliances restoring function lost by the work-related injury. Huff is not requesting modifications to the apartment. He has not requested a lift, a ramp, or any other assistive device. He has requested CRST be ordered to secure an accessible apartment for him and pay for any rent exceeding $370.00.

First, it is necessary to determine whether rent is an appliance under the statute. The Iowa Supreme Court has adopted the dictionary meaning of the term "appliance," which is a "means to an end." Siosin, 529 N.W.2d at 264. The court has also looked at the agency rule definition of appliances in Ciha, set forth in the administrative rule:

> [a]ppliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes. Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

Chia, 552 N.W.2d at 155 (citing 343 Iowa Admin. Code r. 8.5, now found at 876 Iowa Admin. Code r. 8.5). Webster's New World College Dictionary (3rd College Ed. 1988) defines "rent" as "a stated return or payment for the temporary possession or use of a house, land, or other property, made usually at fixed intervals, by a tenant or user to the owner." Rent, by its plain meaning does not correct a condition. I do not find it be an appliance.

[7] Based upon the representation of Richard's counsel at the hearing on Application II, this request appears to have been abandoned. (07/21/17 Hearing Trans. at 15; J.Ex. 24 at 80).

> Next, it is necessary to determine whether locating and securing an accessible apartment is an appliance or medical care or service contemplated under Iowa Code section 85.27. Some persons who experience work injuries, like Siosin, require twenty-four hour care, and some persons who experience work injuries like Castle, require twenty-four hour care in a nursing care or skilled facility, as a result of their work injuries. Certainly these services and care are contemplated to be covered under Iowa Code section 85.27. While living in a facility, a person with a work injury may receive and use a hearing aid, dentures, braces, or a wheelchair, which are all appliances. The facility provides the person with services or care required because of the person's condition caused by the work injury. There was no evidence presented at either hearing Huff needs nursing care or skilled nursing case. George opined Huff is independent with many activities of daily living, as analyzed above, and did not recommend such care.
>
> The statute and administrative rule make no mention about assistance in finding and securing an apartment. Finding and securing an apartment are not covered services set forth in the statute or rule. It is unclear how finding and securing an apartment could restore function like a hearing aid, dentures, braces, or a wheelchair, which are all appliances.
>
> Even assuming for purposes of argument assistance in finding and securing an apartment is a covered service, Huff has not established his need for such assistance was caused by a work injury. As noted above, Huff elected not to pay rent and to live out of the truck owned by CRST before the work injury. When he was discharged from the hospital, Huff elected to move into student housing with his son. His living situation was not caused by the work injury. Huff has not requested modifications to the apartment. I do not find his need to find and secure an apartment reasonable and necessary.

(12/13/19 Remand Dec. at 21-22).

Under this record, the Deputy could reasonably find all of the following facts. Richard elected to live in his CRST truck from the date of hire until the date of the accident in which he was injured. Rent is not an appliance. Locating and securing an apartment is not an appliance, medical care or service contemplated by section 85.27. Richard does not require twenty-four hour care, either in his home or in a supervised living arrangement. Richard's own assessment says he is independent in many of the

activities of daily living. The assessment does not recommend assistance with these activities.

The Deputy could further find the following facts. While hearing aids, dentures, braces and a wheelchair are all appliances that can restore function, it is unclear how finding and securing an apartment can restore function to Richard. In addition, Richard's living situation was not caused by his work-related injury.

Richard construes his pre-injury attempt to live rent free in his company vehicle as an issue of first impression that should result in CRST being responsible for a portion of his post-injury monthly rent and an obligation to find him an apartment. Missing from this construction is a nexus between his work injury and his living arrangements. The agency reasonably found Richard's request for rental assistance and assistance finding and securing an apartment are not reasonable and necessary under the facts in this case.

For all of these reasons, the agency's finding adverse to Richard regarding assistance in finding an apartment for him and in paying part of the monthly rent for this apartment is supported by substantial evidence in the record when it is considered as a whole. The agency's interpretation of the relevant statutory and rule provisions does not contain errors of law, and is not affected by irrational reasoning, a failure to consider relevant facts, or an irrational, illogical and wholly unjustifiable application of law to the facts. The agency did not fail to consider a relevant and important matter related to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action. Nor

is the agency's decision characterized by an abuse of discretion or an unwarranted exercise of discretion. The agency decision on this issue should be affirmed.

D. Richard's request for a home healthcare provider or community based assistance with activities of daily living. As to this request, the agency on remand determined:

> 2. Home Healthcare Provider or Community Based Assistance with Activities of Daily Living.
>
> During the first and second hearing on Huff's applications for alternate medical care he requested CRST be ordered to provide a home healthcare provider and/or in-home and community-based ADL assistance. CRST paid for home-based wound care when Huff needed such care after he was discharged from the hospital. There was no evidence presented at either hearing Huff needs any wound care or assistance with medications from a home healthcare provider.
>
> Due to their work injuries, Sioson and Ciha developed quadriplegia. After her work injury Siosin required assistance from others with transfers, positioning, feeding, bathing, dressing, bowel and bladder control and she required twenty-four hour care. Sioson, 529 N.W.2d at 261. Ciha also required assistance from his wife with dressing, changing urine bags, transfers between his wheelchair and bed, repositioning one to four times per night, digital bowel stimulation for ninety minutes every other day, in addition to other nursing services. Ciha, 552 N.W.2d at 147-48. Certainly as a result of their work injuries such services were reasonable and necessary for Sioson and Ciha.
>
> In her report George indicated Huff can dress himself, transfer in and out of bed and other areas, manage money, prepare meals, eat, clean, dry, and fold laundry, perform most essential components of housework, follow directions from his health care providers, follow instructions, use the telephone, recognize and respond to an emergency independently, and he is continent. (Ex. 4, pp. 2-3). George's report indicates deficiencies in bathing, grooming, and negotiating porches, stairs, and ability to get to the doctor's office, bank, drive, get in and out of a car, and use public transportation. (Ex. 4, p. 3).[8]

[8] The record indicates there is no public transportation in the area where Richard lives.

> George's report indicates Huff cannot perform the most essential components of bathing. Her report does not indicate what components Huff cannot perform or what assistance he needs from a home healthcare provider or homemaker with bathing. Huff testified he is able to get into a shower and take a shower. Unlike Siosin and Ciha, Huff has the ability to use his arms. Huff indicated he shaves once per month because of difficulty standing. He did not indicate how often he wants to shave. He did not request any assistive devices for shaving in the shower or by the sink. George's report does not identify any need with shaving. She identified Huff has problems with brushing his teeth, but this is due to mouth pain, not an inability to use a toothbrush. (Ex. 4).
>
> George indicated Huff needs assistance with cutting his toenails. Huff testified concern his inability to bend his right knee. Huff's knee condition may be temporary, if function is restored to his knee in the future. Until his function improves, Huff will require assistance with cutting his toenails. CRST is ordered to arrange for the cutting of Huff's toenails on a reasonable basis, either at his medical appointments or in his home.
>
> CRST has provided Huff with transportation assistance to his medical appointments, therapy, and to pick up necessary prescriptions. Huff owned a vehicle that he gave to his son before his work injury. Huff paid a taxi cab to obtain items he needed when he was not using the truck owned by CRST before his work injury. Huff's work injury is not the cause of his need for transportation services. Huff has not established his request for transportation assistance to the store or bank or any other non-medically related location is reasonable and necessary.[9]

(12/13/19 Remand Dec. at 20-21).

The Deputy could reasonably find the following facts. There is no evidence that Richard needs assistance with wound care or medication. His own assessment from Shondra George indicates he is capable of doing many things essential for daily living, as specified by the Deputy. He has the full use of his arms. He has not requested assistive devices for shaving. His bathing assertion does not specify what he cannot do or what assistance he needs. He can and does take a shower.

For all of these reasons, the agency reasonably found Richard's request that he be provided with a home healthcare provider or community based assistance with activities of daily living is not reasonable and necessary. This finding is supported by substantial evidence in the record when it is considered as a whole. The agency's interpretation of the relevant statutory and rule provisions does not contain errors of law, and is not affected by irrational reasoning, a failure to consider relevant facts, or an irrational, illogical and wholly unjustifiable application of law to the facts. The agency did not fail to consider a relevant and important matter related to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action. Nor is the agency's decision characterized by an abuse of discretion or an unwarranted exercise of discretion. This agency decision on this issue should be affirmed.

E. **Richard's request regarding the CRCG-AAA assessment**. Richard takes issue with the agency's decision regarding the CRCG-AAA assessment presented as evidence during the alternate care hearings at issue. Specifically, Richard wants the court to require CRST to present this assessment to a physician, or require CRST to obtain its own assessment.

The Deputy discussed the assessment in the remand order in the findings of fact and in the determination that Richard does not require the assistance of a home health care provider or community based assistance with the activities of dialing living.

[9] The court assumes this paragraph was inadvertently inserted into this section as opposed to the section regarding Richard's transportation request.

(12/13/19 Remand Dec. at 7-9, 20-21). As noted above, the court does not disagree with the agency's findings and conclusions on this issue under the record presented.[10]

F. **Other matters**. Richard requests that if the court deems a remand is warranted, the court should order the Commissioner to not assign this matter to the Deputy who issued the prior decisions regarding Richard. A remand is not required. Regardless, the court cannot tell the Commissioner whom he should or should not assign cases to on remand or otherwise. Such decisions are firmly within the discretionary authority of the Commissioner, not the court on judicial review.

CONCLUSION

The agency issued a comprehensive order in this matter regarding the three issues Richard asserts. Under the record presented, Richard is significantly different from the claimants in *Siosin*, *Ciha* and *Castle* because he retains meaningful function. The extent of his injuries is not so great as to make his need for additional appliances readily apparent. The things he requests are not appliances, or are appliances that are unavailable to him under this record.

The agency's decision should be affirmed, the Petition should be dismissed, and costs should be assessed to Richard.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the final agency decision is affirmed and the Petition is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are

[10] The court notes the assessment report Richard references is now almost four years old. Richard is free to complete a new assessment of his current capabilities and make a

assessed to Petitioner Richard Huff.

new request for alternate medical care as a result of that assessment if warranted.

State of Iowa Courts

Case Number	**Case Title**
CVCV054578	RICHARD HUFF VS CRST EXPEDITED INC ET AL
Type:	OTHER ORDER

So Ordered

Jeanie Kunkle Vaudt

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-02-16 23:22:02