

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

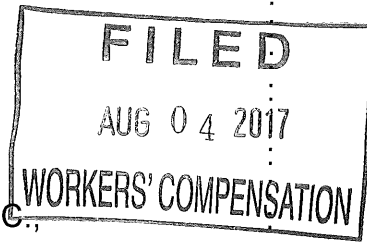
RICHARD HUFF,

Claimant,

vs.

CRST EXPEDITED, INC.,

Employer,
Self-Insured,
Defendant.



File No. 5063162

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 17A and 85. Claimant Richard Huff filed a petition for alternate medical care on May 26, 2017, alleging he sustained injuries to his right leg and foot, left leg and foot, neck, head trauma, multiple fractures to his teeth, sequela pressure ulcers, a right leg reconstruction, and depression as a result of an accident that occurred on April 24, 2016 while he was working. Huff reported the injury to his employer, the defendant, CRST Expedited, Inc. ("CRST"). CRST has provided medical care and treatment to Huff, including several surgeries and hospitalizations.

Huff filed an application for alternate care May 26, 2017, requesting: "1) a handicap accessible/ADA compliant living arrangement near Lithia Spring, GA (near ATP Dr. Terrell, who is now over 3 hours away); 2) a handicap van or alternative means of transportation for any and all reasonable purpose; and 3) a home healthcare provider and/or in-home community-based ADL assistance." A hearing was held on July 9, 2017. Exhibits 1 and A were admitted into the record. Attorney R. Saffin Parrish-Sams appeared with her client, Huff. Huff testified. Attorney Charles Blades appeared on behalf of the defendant. Sara Palmer, a nurse case manager, testified on behalf of CRST. The proceeding was recorded by digital recorder and the digital recording is the official record of the proceeding. A decision was issued on June 12, 2017. Huff filed an application for rehearing on July 3, 2017, which was denied July 12, 2017. Huff filed a petition for judicial review in the district court on July 21, 2017.

On July 21, 2017, Huff filed a second application for alternate care, requesting, "1) wheelchair accessible/ADA compliant living arrangement near Lithia Spring, GA (near ATP Dr. Terrell, who is now over 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." Defendant filed a response on August 3, 2017, alleging the June 12, 2017 decision is res judicata. Attorney Parrish-Sams appeared on behalf of Huff. Attorney Blades appeared on behalf of the defendant. During the hearing on August 3, 2017, Exhibits 1 and A from the first

hearing were admitted as Exhibits 1 and A, the recording from the first hearing was admitted as Exhibit 2, Exhibits 3 through 5, and B and C were admitted into the record. No testimony or other evidence was received.

The undersigned has been delegated with the authority to issue final agency action in this matter. Appeal of this decision, if any, is to the district court pursuant to Iowa Code section 17A.19.

FINDINGS OF FACT

At the first hearing the following findings were made, which are incorporated into this decision.

On April 24, 2016 Huff was involved in a trucking accident in Wyoming while he was working for CRST where he sustained multiple injuries to his body, including a crush injury to his right leg. (Huff Testimony) Huff's co-driver was killed in the collision. (Huff Testimony) Huff was hospitalized in Wyoming, Colorado, and Savannah, Georgia between the date of the accident, through July 2016, and he has received multiple surgeries. (Huff Testimony; Exhibit 1, page 3) During his hospitalization Huff developed decubitus ulcers on his bilateral heels. (Huff Testimony)

Before his work injury Huff's home went through a foreclosure proceeding. (Huff Testimony) Huff gave his son his personal vehicle when CRST hired him. (Huff Testimony) At the time of his work injury Huff did not own a home or a car and he lived out of his truck. (Huff Testimony) Huff completed his activities of daily living at a local Wal-Mart or truck stop while he was living in his truck. (Huff Testimony) Huff took cabs when he traveled to locations away from Wal-Mart or the truck stop and often ate fast food. (Huff Testimony)

The hospital discharged Huff to his son's apartment, student housing, at George State University. (Huff Testimony) The apartment Huff moved into contains four bedrooms. (Huff Testimony) Huff had his own room and three other college students, including his son used the other three rooms. (Huff Testimony) The apartment is located on the second floor of the building. (Huff Testimony) The building does not have an elevator. (Huff Testimony)

Brandy Dickerson, RN, completed a comprehensive adult assessment on July 29, 2016 for Huff. (Ex 1, pp. 3-7) Dickerson noted that Huff needs assistance with: activities of daily living including: (1) placing grooming utensils within reach before completing grooming activities; (2) assistance with putting on upper body clothing, undergarments, socks, slacks, and shoes; (3) bathing supervision; (4) toilet transfers; (5) preparing light meals; (6) shopping; (7) wound treatments; and (8) medication administration. (Ex. 1, pp. 1-7)

Huff received nursing care services in his son's apartment for two weeks following his discharge for wound care. (Huff Testimony) Huff testified the nursing care services were discontinued. (Huff Testimony)

Huff's right foot ulcer did not heal. (Huff Testimony) CRST retained a physician, Dr. Martin, to provide regular wound care to Huff. (Huff Testimony) Huff's right foot ulcer did not heal until February or March 2017. (Huff Testimony) During the hearing Huff did not report he had any current decubitus ulcers. (Huff Testimony) Huff reported he is not able to check the bottoms of his feet to see if he has any ulcers. (Huff Testimony) Huff has continued to receive regular medical treatment provided by CRST since his discharge from the hospital. (Huff Testimony)

Huff uses a wheelchair and crutches for ambulation. (Huff Testimony) Huff reported he can stand for approximately ten to fifteen minutes using crutches on his left leg before it gives out. (Huff Testimony) Huff typically uses his wheelchair for ambulation. (Huff Testimony) Huff has had many falls in his apartment. (Huff Testimony) When Huff leaves the apartment he collapses his wheelchair and slides down the stairs one stair at a time until he is at the bottom. (Huff Testimony)

Huff cannot fit his wheelchair into the bathroom, so he uses his crutches go into the bathroom, and a chair placed in the bathtub for bathing. (Huff Testimony) Huff lifts his legs into the tub and sits on the chair. (Huff Testimony) Huff shaves approximately once per month and testified he cannot shave more often because he cannot stand long enough to shave. (Huff Testimony)

Huff is able to wheel himself into the kitchen. (Huff Testimony) Huff has a dishwasher in his apartment, but he washes his dishes by hand because he is living alone. (Huff Testimony) Huff is able to roll his wheelchair up to the stove. (Huff Testimony) Huff struggles to change his bed linens, and must climb up on his bed to change the linens. (Huff Testimony) Huff has access to a stackable washer and dryer. (Huff Testimony) Huff reported it is difficult for him to reach the dryer and to remove clothes from the dryer. (Huff Testimony)

Huff struggles to use a broom and vacuum, but he can do laundry, use a mop, and scrub his sink and toilet. (Huff Testimony) Huff cannot clean between the bathtub and the toilet due the configuration of the room, and he cannot scrub the bathtub. (Huff Testimony) Huff throws trash bags off his balcony and picks up the trash downstairs. (Huff Testimony)

Huff takes a taxi cab to the grocery store and uses an electric scooter in the store while shopping. (Huff Testimony) During a recent trip to the store Huff was unable to find an electric scooter and had to return home without his groceries. (Huff Testimony) There is no public transportation available to Huff where he lives. (Huff Testimony) Huff testified he applied for Social Security benefits, but he was not able to make it to his appointment. (Huff Testimony)

During the collision many of Huff's teeth were damaged and some were knocked out. (Huff Testimony) Huff does not brush his teeth because his teeth hurt too much, and he is scheduled to have oral surgery to remove his teeth. (Huff Testimony) Huff needs to undergo oral surgery and quit smoking before his treating orthopedic surgeon, William Terrell, M.D., will perform additional surgery. (Huff Testimony; Ex. A, p. 3)

Huff originally treated with Mark Kamaleson, M.D., who was located closer to Huff. (Huff Testimony) Huff requested his care be transferred to Dr. Terrell, who is located more than 200 miles away because he believes Dr. Terrell is more skilled than Dr. Kamaleson in treating crush injuries. (Huff Testimony) CRST agreed to transfer Huff's care to Dr. Terrell. (Huff Testimony) CRST has arranged for transportation for Huff to his appointments with Dr. Terrell, physical therapy, and to the pharmacy. (Huff Testimony)

Huff testified he is pleased with the medical care he has received from CRST, including his care with Dr. Terrell. (Huff Testimony) Dr. Terrell has discussed amputating Huff's right leg. (Huff Testimony) Huff would like to keep his leg. (Huff Testimony) Huff initially received physical therapy, and reports that he had greater mobility in his knee following physical therapy, but he now only has movement from 110 or 115 degrees to three or four degrees. (Huff Testimony) Huff is interested in additional physical therapy, but did not request physical therapy in his petition for alternate medical care. (Huff Testimony)

Huff relayed that Palmer, the nurse case manager, has been responsive to him, and promptly arranges for his transportation to medical appointments. (Huff Testimony) Huff does not like the local nurse case manager, Donna Kerr, and referred to Kerr as "useless." (Huff Testimony)

Huff's son moved to Atlanta in December 2016, several hundred miles away. (Huff Testimony) Huff reported he was being evicted from the apartment. (Huff Testimony) Huff cannot live with his son because his son is currently living with Huff's ex-wife. (Huff Testimony) Before the June hearing, Huff applied for public housing assistance, and met with an individual a week before the hearing, but no alternative housing had been located. (Huff Testimony)

Huff testified he has not personally discussed his living arrangements or inability to obtain groceries with Palmer. (Huff Testimony) Huff would like to live closer to his son and Dr. Terrell near Atlanta. (Huff Testimony) Huff testified he currently pays \$370 in rent per month and is willing to contribute \$370 in rent per month if CRST would provide him with accessible housing. (Huff Testimony)

Huff's attorney sent an e-mail to Palmer on November 17, 2016, reporting Huff's son had moved, and Huff did not have a way of getting to the grocery store, carrying the food up the stairs to his apartment, and he could not stand long enough to cook. (Ex. 1, p. 9) Huff's attorney requested CRST provide home delivered meals. (Ex. 1, p. 9) Palmer responded on November 21, 2016, stating "I have been Mr. Huff's advocate to the extent that I can. Maybe a grocery store in his area delivers; such as the Hy-Vee's in Iowa. I'm sure there are similar offerings in his area." (Ex. 1, p. 9)

On January 20, 2017, Huff's attorney sent CRST's attorney a letter, notifying him that Huff was being evicted from his apartment, and reporting:

CRST is well aware that the accident caused Mr. Huff to lose function, and become unable to take care of many of his most basic needs by himself. CRST is also aware that Mr. Huff is unmarried, and has no spouse who can provide these services. Essentially, CRST has abandoned many aspects of the reasonable and necessary medical care, treatment, services, supplies, appliances and transportation that Mr. Huff needs as a result of his injury, and for which CRST is responsible under Iowa Code § 85.27. This includes, but is not limited to the following, which but for the injury he would not need:

- a handicap accessible/ADA compliant place to live;
- a handicap van with electric lift/ramp or an alternative means of transportation to places like the grocery store, the bank, the post office, etc. . . .; and
- home health aid services, including someone to assist with cooking, cleaning, laundry, and other activities of daily living which Mr. Huff cannot do given his wheelchair bound state.

Mr. Huff's need for these medical "appliances" and "services" is solely due to his work-related injuries. But for the work-injuries, he would not need any of them. Up until now, these services were generously being provided to Richard – at no cost to CRST – by Richard's adult son. Unfortunately, Richard's son moved in mid-December in order to take a new job, so now Richard has been on his own, living in a second floor apartment with no elevator with no one to provide for these needs.

(Ex. 1, p. 8)

Huff testified at hearing that he does not need assistance from a nurse with medications or wound dressing. (Huff Testimony) His needs may change when he has surgery in the following months. No evaluation had been conducted of Huff in his home to determine any needs he has with activities of daily living at the time of the hearing.

Following the hearing Huff obtained an assessment from Harmony Coastal Georgia Region AAA HCBS Case Management, which indicates it was last updated on June 20, 2017. (Ex. 4, p. 2) No order or medical record from a physician has been submitted by the parties documenting Huff requires a "1) wheelchair accessible/ADA compliant living arrangement near Lithia Spring, GA (near ATP Dr. Terrell, who is now over 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." Huff's attorney made a professional statement Huff has been living in his wheelchair and also reported he has returned to the student housing apartment he was living in at the time of the first hearing.

REASONING AND CONCLUSIONS OF LAW

An employer is required to 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. Iowa Code § 85.27(1) (2015). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

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). "The 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). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Huff had a need for nursing care services when he was discharged from the hospital in July 2016, a year ago. Huff received wound care in his son's apartment for two weeks from a nurse, until the care was discontinued.

Huff requests the deputy commissioner order CRST to provide him with "1) wheelchair accessible/ADA compliant living arrangement near Lithia Spring, GA (near ATP Dr. Terrell, who is now over 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." Huff is not requesting modifications to his home or vehicle. Huff does not own a vehicle, nor did he own a vehicle at the time of his work injury. Huff did not rent or own a home at the time of his accident, and moved in with his son after he was discharged from the hospital.

Home modifications, modified vehicles, transportation, and nursing services may be covered expenses under Iowa Code section 85.27. See Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 154-58 (Iowa 1996) (affirming decision awarding the cost of home modifications, modifications to a van after Ciha attended a comprehensive week-long evaluation at Craig Hospital, and nursing services provided by Ciha's wife after she received "specialized training" by the hospital to assist Ciha with dressing changes, changing urine bags, transferring Ciha between his wheelchair and bed, repositioning Ciha to avoid pressure sores, and providing digital stimulation for ninety minutes every other day to induce bowel movements). Unlike Ciha, none of Huff's current medical

providers have opined that Huff needs a "1) wheelchair accessible/ADA compliant living arrangement near Lithia Spring, GA (near ATP Dr. Terrell, who is now over 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."

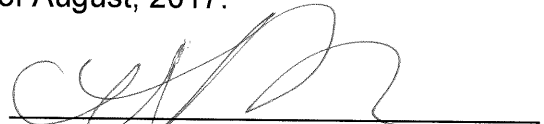
Huff has provided an assessment for HCBS services in Georgia. No information was presented at hearing concerning the qualifications of the person who performed the assessment. No document has been provided from a physician documenting Huff has a need for home and community based waiver or other services.

In the first hearing Huff did not present evidence he has a medical need for assistance with dressing changes, toileting, repositioning, or transfers, clear nursing services covered by the statutes, as opposed to general care services including dressing, bathing, and feeding. Ciha, 552 N.W.2d at 156. No additional evidence was received from a medical provider concerning such a need at the second hearing. Huff has not cited to any authority supporting that an employer may be responsible for paying for the cost of an apartment or for locating an apartment. Huff has not met his burden of proof in this case.

ORDER

Claimant's petition for alternate care is DENIED.

Signed and filed this 4th day of August, 2017.


HEATHER L. PALMER
DEPUTY WORKERS'
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