IN THE COURT OF APPEALS OF IOWA

No. 6-839 / 06-0893
Filed December 13, 2006

BONNIE COOP,
Petitioner-Appellant,

vs.

JOHN DEERE DES MOINES WORKS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

Petitioner appeals the district court's affirmance of the workers' compensation commissioner's determination the employer was not required to purchase a van for her. **AFFIRMED.**

David D. Drake of Lawyer, Lawyer, Dutton & Drake, L.L.P., West Des Moines, for appellant.

Joseph A. Quinn of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Miller, P.J., and Vaitheswaran, J., and Robinson, S.J.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

ROBINSON, S.J.

I. Background Facts & Proceedings

Bonnie Coop was formerly employed by John Deere Des Moines Works. She was injured in 1990, and subsequently developed reflex sympathetic dystrophy, which has confined her to a wheelchair. John Deere has paid for the wheelchair, home renovations, hospital beds, customized shower chairs, and nursing care twenty-four hours a day, seven days a week.

In 1991, Coop and her husband, Winfred (Fred) Coop, purchased a 1991 Ford van for $17,864. John Deere refused to pay for the van, but paid about $7000 for modifications to the van for Coop's wheelchair. In 2001, the Coops purchased a new Dodge van for $25,863.[1] John Deere refused to pay for the van, but it paid about $22,000 to modify the van. Each van was used to take Coop to her medical appointments and other places. Coop is unable to drive, and her husband drives the van to take her to appointments.

In 2003, Coop filed a petition in arbitration, seeking to have John Deere pay the cost of the two vans. At the administrative hearing, Fred Coop testified he was employed by the Metro Transit Authority. He stated a Paratransit bus was available to take Coop anywhere in the metropolitan area from 6:00 a.m. to 8:00 p.m., if she scheduled the bus ahead of time. He stated he tried to get Coop out of the house about once every two weeks to help her mood.

Coop testified that at the time of the accident she had a Ford Escort. She stated the van was necessary to take her to her medical appointments. She had attempted to take the Paratransit bus soon after she was injured, but the

[1] The old van was sold for $3500 at that time.

bumpiness of the ride caused her pain. All of her medical appointments are in the Des Moines metropolitan area. A representative of John Deere appeared at the hearing and stated the company had paid about $2.5 million thus far for Coop's medical needs and weekly benefits.

Under Iowa Code section 85.27(1) (2003), an employer is required to furnish reasonable and necessary "appliances" for an injured worker. The deputy workers' compensation commissioner determined Coop had failed to show a van was reasonable and necessary. The deputy determined, "There is no evidence from any of claimant's health care providers that claimant's van is a medical necessity for claimant." The deputy noted, "There is no evidence from any healthcare provider that the use of Paratransit services are harmful to claimant." The deputy concluded Coop was not entitled to the cost of the two vans as medical appliances or benefits. The deputy's decision was adopted as final agency action by the workers' compensation commissioner.

Coop filed a petition for judicial review. The district court affirmed the commissioner. The court determined the modifications to the vans replaced physical function lost by the injury, and the employer was required to pay the cost of the modifications. Coop, however, was not entitled to reimbursement for the purchase price of the vans. Coop now appeals.

II. Standard of Review

Our review is governed by the Iowa Administrative Procedure Act. Iowa Code ch. 17A; *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standard of chapter 17A to the

agency action to determine if our conclusions are the same as those reached by the district court. *University of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). We may reverse, modify, or grant other relief if a party shows the agency's action is "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f).

III. Merits

Coop contends the cost of the two vans is a reasonable and necessary expense under section 85.27(1), which should be reimbursed by the employer. Section 85.27(1) provides:

> The employer, for all injuries compensable under this chapter and chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefore and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

"[A]n expense falls within the scope of section 85.27 if it covers the cost of a device that replaces a function lost by the employee as a result of the employee's work-related injury." *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 492 (Iowa 2003).

Coop relies upon the case of *Manpower Temporary Services v. Sioson*, 529 N.W.2d 259, 264 (Iowa 1995), where the supreme court upheld the commissioner's determination that a modified van was a reasonably necessary

appliance for the claimant. In that case, however, there was evidence from medical professionals that "the van is a medical necessity." *Manpower*, 529 N.W.2d at 261. Furthermore, the claimant did not have a vehicle before the accident. *Id.* at 262. The court held:

> The key question remains: whether the modified van constituted medical care, appliance, or transportation as contemplated by the statute. Although factual situations supporting such a finding would be extremely rare, we, like the district court, agree that the commissioner could find one here.
>
> We begin with the unusually strong medical evidence of necessity and of the record that Miya'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 Miya's wheelchair fully useful.

Id. at 264.

In *Quaker Oats Company v. Ciha*, 552 N.W.2d 143, 156 (Iowa 1996), the commissioner awarded a claimant the cost to modify a van, but not the purchase price of a van. The supreme court affirmed the commissioner's ruling. *Quaker Oats*, 552 N.W.2d at 156. Whether the cost of a van is a reasonable expense under section 85.27 is a question of fact. *See id.* at 154. The commissioner's findings should be affirmed if supported by substantial evidence. *Id.*

We find there is substantial evidence in the record to support the commissioner's findings in this case. Unlike the claimant in *Manpower*, Coop did not present evidence from health care providers that a van was medically necessary. *See Manpower*, 529 N.W.2d at 261 (noting physically transferring claimant from her wheelchair to a car could be injurious). The claimant there had medical appointments in a different town, and could not take a Paratransit bus.

Id. (noting claimant had appointments outside of Iowa City). Furthermore, the claimant had never owned a car, and instead preferred "walking or traveling by bicycle, or by public transportation." *Id.* at 262.

We affirm the conclusions of the district court and the commissioner that Coop did not present evidence to show the type of "extremely rare" situation where an employer would be required to provide a claimant with a van as a reasonable and necessary appliance.

AFFIRMED.