

**IN THE COURT OF APPEALS OF IOWA**

No. 9-346 / 08-1678  
Filed June 17, 2009

**DES MOINES REGISTER,**  
Employer/Petitioner-Appellee,

**and**

**LIBERTY MUTUAL,**  
Insurance Carrier/Petitioner-Appellee,

**vs.**

**DONNA SUE SHARON,**  
Claimant/Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Employee appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. **REVERSED AND REMANDED WITH DIRECTIONS.**

Charles E. Cutler and Rebecca M. Threlkeld of Cutler Law Firm, P.C.,  
West Des Moines, for appellant.

Jason T. Farley and James C. Huber of Huber, Book, Cortese, Happe &  
Lanz, P.L.C., West Des Moines, for appellees.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**DOYLE, J.**

Donna Sue Sharon appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. We reverse the judgment of the district court and remand to the agency for further proceedings consistent with this opinion.

***I. Background Facts and Proceedings.***

While working for the Des Moines Register in October 1987, Sharon was involved in a serious motor vehicle accident that rendered her a paraplegic. Mary Jo Moser has been providing Sharon with home nursing services since her accident. When Moser first started caring for Sharon, she was employed by a company known as Nurse Force as a licensed certified nursing assistant. Moser eventually left that position and began working for Sharon directly. She and Sharon now live together so Moser can care for Sharon full-time.

Moser performs a variety of tasks for Sharon throughout the day. She assists Sharon with bathing, dressing, and exercises for her arms and legs. She also repositions Sharon in bed, checks the skin on her legs for lesions, tends to her bowel and bladder regimes, assists her in irrigating her catheter, helps her put on compression stockings, and administers her medications. In addition to those tasks, Moser helps Sharon get out of bed in the mornings, brings her breakfast, runs errands for her, takes her to physical therapy and doctors' appointments, and helps her get ready for bed in the evenings.

Moser is paid ten dollars per hour for four hours each day for her services in caring for Sharon.<sup>1</sup> She estimates, however, that Sharon actually requires eight to twelve hours of care each day. Sharon's physicians have also indicated she needs full-time care. Liberty Mutual, the insurer for Sharon's former employer, has refused to reimburse Sharon for more than four hours of nursing services per day at ten dollars per hour.

Sharon filed a petition pursuant to Iowa Code section 86.14 (2005) with the Iowa Workers' Compensation Commissioner in August 2005 seeking medical expenses under section 85.27. The parties' hearing report stipulated, "The issues to be decided by the deputy in this case are the appropriate amount to be paid to Mary Jo Moser for care and services she is providing to Donna Sue Sharon, both in the past and future." However, in a post-hearing brief, Liberty Mutual contested whether the services provided by Moser were compensable "nursing" services under section 85.27. It additionally asserted Sharon did not have standing to seek a higher rate of pay for Moser.

Following an arbitration hearing, the deputy workers' compensation commissioner found the services provided by Moser were compensable nursing services under section 85.27.<sup>2</sup> However, the deputy declined to determine the rate of compensation Moser should be paid for those services because the parties did not use the health service dispute resolution procedure set forth in Iowa Administrative Code rule 876-10.3 prior to the initiation of the contested case proceeding. Sharon appealed, and a different deputy workers'

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<sup>1</sup> Sharon pays Moser herself and is reimbursed by Liberty Mutual.

<sup>2</sup> Liberty Mutual did not appeal this determination.

compensation commissioner, sitting as commissioner, affirmed and adopted the hearing deputy's decision with some additional analysis. Sharon then filed a petition for judicial review. Following a hearing, the district court affirmed the agency decision.

Sharon appeals. She claims the agency erred in interpreting rule 876-10.3 and finding it applied to the facts of this case.<sup>3</sup>

## ***II. Scope and Standards of Review.***

The Iowa Administrative Procedure Act, chapter 17A of the Iowa Code, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). We apply the standards of section 17A.19(10) to the agency's decision and decide whether the district court correctly applied the law in exercising its judicial review function. *Lakeside Casino v. Blue*, 743 N.W.2d 169, 172-73 (Iowa 2007).

"The interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005); see also Iowa Code § 17A.19(10)(c). We are therefore free to substitute our own judgment de novo for the agency's interpretation of the law. *Finch*, 700 N.W.2d at 330; see also *Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) ("Regardless of the standard of review the legislature requires courts to use when reviewing agency action, the interpretation . . . of a statute, or an agency rule interpreting a statute, is an issue

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<sup>3</sup> Because our determination of this issue is dispositive, we need not and do not address Sharon's other claims on appeal.

for the courts to decide.”). On the other hand, application of the law to the facts is clearly vested in the agency. See *Lakeside Casino*, 743 N.W.2d at 173. Therefore, we may reverse the commissioner’s application of the law to the facts only if it is “irrational, illogical, or wholly unjustifiable.” *Id.*; see also Iowa Code § 17A.19(10)(m).

### ***III. Discussion.***

Iowa Code section 17A.10(1) provides that “informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged.”<sup>4</sup> To that end, administrative rule 876-10.3 establishes a procedure for informal resolution of “health service” disputes “under Iowa Code section 85.27 *between a provider and a responsible party* over the treatment rendered by a provider to an injured worker.” Iowa Admin. Code r. 876-10.3(1) (emphasis added). That procedure is set forth in part in rule 876-10.3(3)(d) as follows:

If the *provider* does not agree to accept the amount of the charge the responsible party agrees to pay, the *provider* shall notify the responsible party in writing. *The provider and the responsible party shall submit the dispute to a mutually agreed upon person for review. . . .* The selected person or persons shall review information submitted *by the provider and the responsible party* and make a determination.

(Emphasis added.) If the procedure detailed in rule 876-10.3 “does not resolve the dispute . . . a contested case may be initiated.” Iowa Admin. Code r. 876-4.46(2).

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<sup>4</sup> We note the statute additionally provides “[t]his subsection shall not be construed to require either party to such a controversy to utilize the informal procedures or to settle the controversy pursuant to those informal procedures.” Iowa Code § 17A.10(1).

Sharon argues that because she is not a “provider” within the meaning of that rule, the agency erred in finding she was required to utilize the informal procedure set forth in rule 876-10.3 before bringing her claim for section 85.27 benefits. We agree.

Our courts have applied nearly identical rules for the construction of statutes to the construction of administrative rules. *Office of Consumer Advocate*, 744 N.W.2d at 643. “When a statute or rule is plain and its meaning is clear, the rules of statutory construction do not permit courts to search for meaning beyond its express terms.” *Id.* “Courts only resort to rules of statutory construction when the explicit terms of a statute or rule are ambiguous.” *Id.* at 644. A statute or rule is ambiguous if reasonable minds could differ or be uncertain as to its meaning. *Id.* We do not believe that is the case here.

By its express terms, the health service dispute resolution procedure outlined in rule 876-10.3 applies only to disputes “between a provider and a responsible party.” Iowa Admin. Code r. 876-10.3(1). A “provider” is defined by rule 876-10.3(2) as “any person furnishing surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, crutches, artificial members and appliances.” Under that definition, Sharon is clearly not a “provider” within the meaning of rule 876-10.3. Liberty Mutual nevertheless argues that we should view her as such because the only way Sharon could have brought a claim seeking increased compensation for Moser’s nursing services was as a health service provider under Iowa Code

section 85.27(3). We do not think that subsection has any application to the facts of this case.<sup>5</sup>

Sharon filed a petition with the workers' compensation commissioner as an injured employee seeking benefits, i.e. compensation for medical expenses she paid herself for her work-related injury. See *Rethamel v. Havey*, 715 N.W.2d 263, 267 (Iowa 2006) (stating a workers' compensation claimant is not entitled to be paid sums for medical expenses unless the claimant paid the expenses himself). We believe she was entitled to pursue such a claim for section 85.27(1) benefits contrary to Liberty Mutual's suggestions otherwise. That section provides

[t]he 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. . . .

Iowa Code § 85.27(1). "Reduced to its essentials, section 85.27 requires an insurer to furnish reasonable medical services and supplies . . . to treat an injured employee." *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 490 (Iowa 2003).

Claims for section 85.27(1) benefits present two separate questions of fact: first, whether the claimed expenses are reasonable services compensable under the statute, and second, whether the claimed value of the services is

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<sup>5</sup> Section 85.27(3) states,

Notwithstanding section 85.26, subsection 4, charges believed to be *excessive or unnecessary* may be referred by the *employer, insurance carrier, or health service provider* to the workers' compensation commissioner for determination, and the commissioner may utilize the procedures provided in sections 86.38 and 86.39, or set by rule, and conduct such inquiry as the commissioner deems necessary.

(Emphasis added.) Section 85.26(4) limits the individuals that may maintain a claim or proceeding for benefits to "the injured employee, or the employee's dependent or legal representative if entitled to benefits."

reasonable. *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 154 (Iowa 1996). Here, the agency answered the first question in finding the services performed by Moser were compensable as “nursing” services. But it declined to proceed to the second question and determine whether the claimed value of those services was reasonable, instead requiring the parties to use the informal settlement procedure set forth in rule 876-10.3 for health service disputes. We conclude this was in error.

In *Quaker Oats*, an employee sought compensation under section 85.27(1) from his employer for home nursing services provided to him by his wife after his work-related injury. *Id.* at 156. The employer “only dispute[d] the *amount* of nursing expenses” claimed by the employee. *Id.* at 154 n.9 (emphasis added). The court affirmed the agency’s award of \$58,447 in-home nursing expenses to the claimant, finding substantial evidence supported the agency’s determination that amount was reasonable. *Id.* at 157. No mention was made of the informal dispute resolution procedure in rule 876-10.3. Indeed, Liberty Mutual has not cited any cases, nor are we aware of any, where an injured worker was required to proceed under rule 876-10.3 before bringing a contested case proceeding seeking medical expenses under section 85.27(1).

Our conclusion is supported by the purpose behind the workers’ compensation act:

The fundamental reason for the enactment of [the workers’ compensation act] is to *avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal* to determine and award compensation under the terms of this act.

It was the purpose of the legislature to create a tribunal to do rough justice—*speedy, summary, informal, untechnical*.

*Marovec v. PMX Indus.*, 693 N.W.2d 779, 787 (Iowa 2005) (citations omitted) (emphasis added). That purpose was clearly undermined by the agency's actions in this case, which has been pending since 2005 with no resolution of the stipulated issues presented to the agency at the arbitration hearing. It is apparent Sharon has not been afforded the "speedy, summary, informal, [and] untechnical" type of justice the workers' compensation act was designed to provide.<sup>6</sup> *Id.*; see also *Zomer v. West River Farms, Inc.*, 666 N.W.2d 130, 134 (Iowa 2003) (refusing to "read into the statute a limitation on the commissioner's authority to decide claims for compensation, particularly when to do so would defeat one of the primary purposes of the statute—the provision of a prompt and adequate remedy").

#### ***IV. Conclusion.***

We conclude the district court erred in affirming the agency's determination that Sharon was required to utilize the health service dispute resolution procedure set forth in Iowa Administrative Code rule 876-10.3 before filing a contested case proceeding seeking home nursing expenses under Iowa Code section 85.27. The judgment of the district court is therefore reversed and the case is remanded to the agency to determine the reasonable value of the claimed home nursing services.

#### **REVERSED AND REMANDED WITH DIRECTIONS.**

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<sup>6</sup> Our decision should not be construed as discouraging the use of the health service dispute resolution procedure in rule 876-10.3 in cases where it properly applies.