IN THE COURT OF APPEALS OF IOWA

No. 0-837 / 00-1003
Filed May 9, 2001

ROY E. STETZEL,
Appellant,

vs.

ANDERSON CONSTRUCTION CO.
and CGU HAWKEYE SECURITY,
Appellees.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Roy Stetzel appeals from a district court ruling which reversed an order issued by the Iowa Workers' Compensation Commissioner. The district court found that certain services provided to Stetzel were not compensable as "nursing" services under Iowa Code section 85.27 (1999). Stetzel contends the services were medically necessary to treat his work related injury and therefore are compensable. **AFFIRMED.**

Steven C. Jayne, Des Moines, for appellant.

E.J. Kelly of Hopkins & Huebner, P.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Roy Stetzel appeals from the district court ruling reversing an order issued by the Iowa Worker's Compensation Commission. Stetzel contends the district court erred in finding that certain services provided to him were not compensable as "nursing" services under Iowa Code section 85.27 (1999). Stetzel argues such services are medically necessary to treat his work related injury and therefore are compensable. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS

Roy Stetzel was injured in the course of his employment with the Petitioner, Anderson Construction Co. (Anderson) on May 28, 1998 when run over by a Caterpillar scraper. Stetzel sustained a number of serious injuries as a result of the accident, including various fractures, internal injuries and total blindness. Stetzel has suffered from depression, for which he "was on Prozac" for a time. As a result of having a portion of his intestine removed he has suffered from diarrhea, a problem which is partially but not completely controlled by medication.

In April of 1999 Stetzel returned to and resumed living in a trailer home he had owned and lived in for a number of years before his injuries. He was seen by one of his physicians, Dr. Marvin Hurd, about a week later, on April 29. In an April 29 "Rehabilitation Note" Dr. Hurd stated:

> It would be advisable again to have some occupational therapy to help him deal with the set up of the home and homemaking functions there. He also will need home health or housekeeping aid especially in view of his blindness to try to help clean up the house and maintain it in a hygienic fashion, make sure the food he has in the refrigerator is fresh and not moldy, etc as he will not be able to determine this.

Stetzel's attorney received a copy of Dr. Hurd's note. He then wrote to Dr. Hurd on May 17, 1999. He pointed out that the duty of an employer and its insurance carrier to pay for reasonable services for an injured employee depended in part on there being a "medical necessity" for the services. He noted that many of the duties or services cited by Hurd could be construed to be more in the nature of homemaking services than nursing services. He stated an opinion that a reasonable argument could be made for services directed to maintaining Stetzel's level of hygiene, nutrition and safety, provided the services were "medically necessary" to allow Stetzel maximum recovery and to function as independently as possible. He then asked Dr. Hurd to advise whether in his opinion home health services for Stetzel were "a medical necessity." Although Dr. Hurd's April 29 note had recommended "home health or housekeeping aid," Stetzel's attorney's letter at all points characterized the note as having recommended "home health aid."

Dr. Hurd responded in a letter dated June 7, 1999. He wrote in part:

> He [Stetzel] is working steadily to try to become more functionally independent. In the process he does require additional services of a medical nature in the sense that without these services he certainly is in jeopardy with regard to his hygiene, nutrition and safety.
>
> Therefore, the use of a home health aide under the direction of a home health nurse to help him establish and maintain a home in which he will not be physically injured by falls and establishing order with safe walkways and mobility throughout the home as well as developing programs to assure good nutrition of food, that is, fresh with adequate meal preparations and appropriate hygienic measures are undertaken.
>
> At this time without this type of home health assistance I feel that the patient is in jeopardy of medical problems which need to be addressed through home health care with nursing and aid involvement.

Stetzel initiated home care services through the Guthrie County Public Health Nursing Service (the Service) beginning May 3, 1999. The person or persons who have provided services to Stetzel in his home have variously been identified as "home care aides," "health aides," and "homemaker health aide[s]." Stetzel testified that the aide fixes meals, does dishes, cleans the kitchen, cleans the bathroom when necessary due to his diarrhea, checks the refrigerator, puts groceries away, and has helped with the laundry. In addition, he testified that a nurse from the Service came out and gave him a flu shot (for which he paid), and someone had come and checked his blood pressure when he had "seemingly had chest pain." Nothing in the record indicates that either the flu shot or the blood pressure check was related to Stetzel's work-related injuries. The home care services are generally provided two hours per day, two days per week.

Janell Stringham is a registered nurse and the administrator of the Service. In a letter to Stetzel's attorney dated November 24, 1999 she stated in part:

> Our agency is providing home care aide services to Mr. Stetzel. . . .
>
> . . . These services are assisting Roy to live independently in his home instead of being institutionalized.
>
> We are providing two hours twice a week. Tasks completed are food preparation, checking freshness of present foods in refrigerator and washing Roy's dishes and pans to avoid food-borne illness.
>
> Home maintenance activities are also completed to prevent falls or injury and sanitation to the bathroom facilities. Mr. Stetzel has had a problem with flies that the home care aides have been working with.

> While the health aides are present they also provide socialization to help alleviate depression as well as teaching Roy methods to increase his independence.
>
> In my opinion these services are medical in nature.

Anderson refused to pay the cost of these home care services. Therefore, Stetzel filed a petition for alternate medical care with the Iowa Workers' Compensation Commissioner. A hearing was held before a deputy commissioner. The deputy was designated by the commissioner to issue the final agency decision pursuant to Iowa Code section 86.3 (1999). The deputy commissioner issued a decision on the record finding that the treatment currently offered by Anderson was not reasonably suited to treat the injury without undue inconvenience on a temporary basis. The deputy stated, in part:

> At this point in time, it appears that Claimant is still in a situation where his ability to cope with the work-related blindness is improving. So this is something that is rehabilitation. It is necessary for day-to-day help, for safety, and to deal with ongoing medical care and treatment.
>
> . . .
>
> And the reason I'm doing this, and I want to make it perfectly clear for the record, you have a doctor ordering it, a doctor says its reasonable and necessary. . . and you have an ongoing medical condition which requires somebody to be there, because the work-related blindness prevents him from doing for himself what he would normally do if he wasn't blind.

The deputy ordered Anderson to provide Stetzel in-home services two days a week for two hours a day through June 11, 2000 at which time the case was to be reevaluated. The on-the-record decision was followed by a memorandum decision confirming the deputy's determination.

Anderson petitioned for judicial review and the district court reversed the deputy's decision. The court concluded that the services provided to Stetzel

were in the nature of services rendered by cooks, chambermaids, etc., not the type of services rendered by nurses, and therefore Anderson was not obligated to provide these services under Iowa Code section 85.27. Stetzel appeals the district court's ruling.

II. STANDARD OF REVIEW

Our review of a final decision of the workers' compensation commissioner, like that of the district court, is for correction of errors of law, not de novo. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). In determining whether the district court erred in exercising its power of judicial review, we apply the standards of Iowa Code section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court. *Williamson v. Wellman Fansteel,* 595 N.W.2d 803, 806 (Iowa 1999); *E.N.T. Associates v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). The agency's findings are akin to a jury verdict, and we broadly apply them to uphold the decision. *Shank,* 516 N.W.2d at 812. While we give limited weight to the commissioner's interpretation of the relevant statutory provisions, we are not bound by them. *Bergen v. Iowa Veterans Home*, 577 N.W.2d 629, 630 (Iowa 1998).

We may reverse, modify, or remand to the commissioner for further proceedings if that agency's action was affected by an error of law, or if it is not supported by substantial evidence when the record is viewed as a whole. *Quaker Oates Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). Evidence is substantial if a reasonable mind would find it adequate to reach the same findings. *Murillo v. Blackhawk Foundry*, 571 N.W.2d 16,17 (Iowa 1997). The

commissioner's decision does not lack substantial evidential support merely because inconsistent conclusions could be drawn from the same evidence. *Id.* The ultimate question is not whether the evidence supports a different finding, but whether it supports the finding the commissioner actually made. *Id.*

III. MERITS

The issue before the district court was whether the commissioner erred in holding that the services being suggested by Stetzel's physician were contemplated and required to be provided by the employer under Iowa Code section 85.27. Iowa Code section 85.27 provides in relevant part:

> 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 therefore and shall allow reasonably necessary transportation expenses incurred for such services.

As set forth in the district court's ruling, "The parties agree that if the services are to be provided they would fall under the category of 'nursing' services." Therefore, the narrow and specific issue before us on appeal is whether the trial court erred in determining that the home care services, suggested by Stetzel's physician and performed by a home care aide whose work is supervised by a nurse, are compensable as "nursing" services under Iowa Code section 85.27.[1]

The legislature did not define the scope of the term "nursing" as used in Code section 85.27. However, our supreme court addressed the issue of what is included under the general category of "nursing" services in *Henry v. Iowa-Illinois*

[1] We note that based on the narrow issue as defined by the agreement of the parties we are not deciding whether the services provided to Stetzel would be covered under any of the other categories listed in §85.27.

Gas & Elec. Co., 522 N.W.2d 301 (Iowa 1994). *Henry* controls our analysis and determination in this case.

> The statute includes nursing as one of many specialized professional services, such as surgical, medical, dental, ambulance and hospital, for which a claimant can receive compensation. Thus, we believe "nursing" denotes professional services "grouped with [the services of] physicians and surgeons and not with [the services of] cooks, chambermaids, etc., employed in purely ministerial and administrative functions."

Id. at 303. In *Henry* the services at issue had been provided by members of the Henry family and included such things as occasionally helping Henry dress, preparing some meals for him, laundering his clothing, cleaning his room, shoveling snow, and the repair of his van, lift and ramp. The supreme court found that although Henry's family performed more services for him after his accident than before, the services "consisted almost entirely of household chores, not nursing as contemplated under section 85.27." *Id.* The court in *Henry* also noted that these services did not require any medical training or licensure and that neither person who provided the services was a registered nurse or licensed practical nurse. *Id.*

It is undisputed that a compensable injury caused Stetzel's need for all or almost all of the home care services provided to him by the Service. However, *Henry* makes it clear it is the nature of the services, and not whether they are required as a result of a compensable injury, that determines whether they constitute "nursing services" within the meaning of section 85.27. Many of the services provided to Stetzel are the same as some of the services at issue in *Henry*. The remaining services provided to Stetzel also consist of household chores rather than nursing services. None of the services require medical

training or licensure and it does not appear from the record that the person providing Stetzel with these services was either a registered nurse or licensed practical nurse.

We agree with the district court that the services provided to Stetzel are more akin to the services rendered by cooks and chambermaids than to what are contemplated as "nursing" services under Iowa Code section 85.27, as that term has been interpreted and applied by our supreme court in *Henry*. Therefore, the employer Anderson Construction Co. is not required to provide these services to Stetzel. We affirm the judgment of the district court reversing the decision of the agency.

AFFIRMED.