

STATE OF MICHIGAN
COURT OF APPEALS

LIFE SKILLS RESIDENTIAL LLC, and ALVIN
HARRIS,

Plaintiffs-Appellants,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 20, 2020

No. 349346
Oakland Circuit Court
LC No. 2018-163442-NF

Before: GLEICHER, P.J., and STEPHENS and CAMERON, JJ.

PER CURIAM.

Plaintiffs, Life Skills Residential LLC (LSR), and Alvin Harris, appeal by right the circuit court orders granting defendant, Titan Insurance Company, summary disposition under MCR 2.116(C)(10), and denying plaintiffs reconsideration. We reverse and remand.

I. BACKGROUND

This is a first party no fault benefit action in which LSR sought to recover no-fault benefits that Harris assigned to it for care that Harris received while in LSR’s residential program. Harris, who suffered a brain injury from a motor vehicle accident in March 2015, progressed into LSR’s semi-independent apartment program in December 2016. Titan’s reason for denying payment to LSR was that it believed the care LSR provided for Harris met the statutory definition of “adult foster care” then in effect, under the Adult Foster Care Licensing Act (AFCFLA), MCL 400.701 *et seq.*, and LSR was not licensed as an adult foster care facility. Titan therefore considered the treatment to have been unlawfully rendered and non-compensable under the no fault act, MCL 500.3157. Titan maintained this contention in its motion for summary disposition, where it relied on the deposition testimony of LSR staff and Harris to argue that there was no genuine issue of material fact that the statutory definition had been fulfilled by LSR’s provision of supervision, personal care, protection, and room and board for Harris. LSR admitted providing Harris supervision, but denied providing the other elements of foster care. The circuit court granted summary disposition in Titan’s favor. Since this case’s inception, multiple provisions of the AFCFLA had been amended. After Titan was granted summary disposition, LSR moved the court

to reconsider its decision on the basis that a new statutory amendment, applied retroactively, further illustrated that it was not an adult foster care facility. The circuit court rejected that motion, and this appeal followed.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

“This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). [*Id.* at 120].

“We also review de novo questions of statutory interpretation[.]” *W A Foote Mem Hosp v Michigan Assigned Claims Plan*, 321 Mich App 159, 168; 909 NW2d 38 (2017) (internal citation omitted), aff’d in part, vacated in part 504 Mich 985; 934 NW2d 44 (2019).

B. ANALYSIS

LSR argues that the circuit court erred in finding that LSR provided adult foster care services to Harris, was required to be licensed as an adult foster care facility, and unlawfully rendered services to Harris. We agree.

Analysis of this issue involves statutory interpretation. “The principal goal of statutory interpretation is to give effect to the Legislature’s intent, and the most reliable evidence of that intent is the plain language of the statute.” *South Dearborn Environmental Improvement Ass’n, Inc, v Dep’t of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). “In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage.” *Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007). “When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted.” *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). “[W]e give undefined statutory terms their plain and ordinary meanings.” *Id.* “This Court may consult a dictionary when interpreting a statutory term.” *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 137; 662 NW2d 758 (2003). Under MCL 500.3107(1)(a) of the no-fault act, MCL 500.3101 *et seq.*, PIP benefits are payable for “[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person’s care, recovery, or rehabilitation.” MCL 500.3157 provides that “[a] physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable

amount for the products, services and accommodations rendered.”¹ “[O]nly treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit.” *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992).

Under the AFCFLA, “ ‘Adult foster care facility’ means a governmental or nongovernmental establishment that provides foster care to adults,” including “facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.” MCL 400.703(4).² “A person, partnership, corporation, association, or a department or agency of the state, county, city, or other political subdivision shall not establish or maintain an adult foster care facility unless licensed by the department.” MCL 400.713. At the time this case was decided, “ ‘Foster care’ mean[t] the provision of supervision, personal care, *and* protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.” MCL 400.704(8)³ (emphasis added). Under this prior version of the statute, “all of those components must be established in order for the services to be considered the provision of foster care.” *Life Skills Village, PLLC v Nationwide Mut Fire Ins Co*, ___ Mich App ___; ___NW2d ___ (2020) (Docket No. 345237); slip op at 6.

The AFCLFA further defines supervision, personal care, and protection.

“Supervision” means guidance of a resident in the activities of daily living, including all or more of the following:

- (a) Reminding a resident to maintain his or her medication schedule, as directed by the resident's physician.
- (b) Reminding a resident of important activities to be carried out.
- (c) Assisting a resident in keeping appointments.
- (d) Being aware of a resident’s general whereabouts even though the resident may travel independently about the community. [MCL 400.707(7)].⁴

¹ MCL 500.3157 has since been amended by 2019 PA 21, effective June 11, 2019.

² MCL 400.703(4) has since been amended by 557 PA 2018 effective March 28, 2019. The amended statute deleted “governmental or nongovernmental establishment” and replaced it with “home or facility”.

³ MCL 400.704(8) has since been amended by 557 PA 2018 effective March 28, 2019. The amended statute added: “provided at a single address. Providing room under a landlord and tenant arrangement does not, by itself, exclude a person from the licensure requirement under this act”.

⁴ MCL 400.707(7) has since been amended by 557 PA 2018 effective March 28, 2019. The amended statute states that supervision includes “1 or more” of the following and not all.

“Personal care” means personal assistance provided by a licensee or an agent or employee of a licensee to a resident who requires assistance with dressing, personal hygiene, grooming, maintenance of a medication schedule as directed and supervised by the resident’s physician, or the development of those personal and social skills required to live in the least restrictive environment. [MCL 400.706(1)].

“Protection” . . . means the continual responsibility of the licensee to take reasonable action to ensure the health, safety, and well-being of a resident, including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation while on the premises, while under the supervision of the licensee or an agent or employee of the licensee, or when the resident’s assessment plan states that the resident needs continuous supervision. [MCL 700.706(5)].

The AFCFLA does not define room and board however, “[w]e may consult dictionary definitions to give words their common and ordinary meaning.” *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503, 515; 821 NW2d 117 (2012) (citation omitted). “Room and board” is commonly defined as “lodging and food” “furnished for a set price or as part of wages.” *Merriam-Webster’s Collegiate Dictionary* (11th ed).

LSR only admits to having provided Harris with supervision and therefore disputes having provided the remaining elements of personal care, protection, and room and board.

The circuit court erred in finding that LSR provided Harris with personal care, protection, and room and board. The circuit court found that LSR provided Harris with personal care not by personally assisting Harris with daily activities, but as the trial court found in *Life Skills Village, PLLC*, through “the development of those personal and social skills required to live in the least restrictive environment.” MCL 400.706(1). *Life Skills Village, PLLC*, instructs that when analyzing whether this aspect of personal care was provided, “we must look to the services themselves to determine whether they constitute the development of personal and social skills for purposes of MCL 400.706(1).” ___ Mich App at ___; slip op at 5.

LSR provided: 1) 24-hour staff availability, 2) daily checks, 3) transportation to medical appointments, 4) prompting, 5) coordination with care teams, and 6) socialization to foster a sense of community. We conclude that these services fall under the category of supervision and not personal care. In *Life Skills Village, PLLC*, the Court held that reminding a resident “to perform daily activities and conducting daily checks on his health and safety” constituted “supervision” under MCL 400.707(7), as amended by 1987 PA 257. *Id.* at 5-6. LSR’s transporting Harris to medical appointments also falls under the definition of supervision as part of “[a]ssisting a resident in keeping appointments.” MCL 400.707(7)(c). The availability of 24-hour staff by itself does not equate to providing Harris with personal care. The uncontradicted testimony was that the staff’s assistance was limited to prompting and guiding Harris toward efficacious self-care, not the

provision of personal assistance. LSR reported to Harris's care teams its staff's observations of the development of Harris's personal and social skills.

Titan argues that LSR personally assisted Harris with emotional regulation. Titan relies on one instance that Jeff Percyzyk, LSR's residential manager, testified to where Percyzyk accompanied Harris to the courthouse. Percyzyk testified that he did so that in the event Harris became impatient and angry, Harris did not make a bad decision that would result in police involvement. There was no testimony as to what Percyzyk did to mollify Harris other than being present as Harris waited in line. The therapeutic team at Life Skills Village provided the actual assistance of developing skills and strategies with Harris to regulate his emotions.

Because there is no proof that LSR provided Harris with foster care as defined in MCL 400.704(7), LSR was not required to be licensed as an adult foster care facility and its services were lawful.

We reject Titan's additional contention that the facts of this case are analogous to *Olsen v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued February, 20, 2020 (Docket No. 346650). Harris's case is not like *Olsen*. In *Olsen*, the claimant "required 24-hour assistance because of impulse control and memory issues, and also required continuous medication management and transportation assistance." There, a facility staff member testified that he managed, monitored, and set up the claimant's medications. Harris did not require nor receive this same level of assistance.

Titan also argues that "words grouped in a list" like supervision, personal care, and protection should be given a related meaning. This argument was made in *Life Skills Village, PLLC*, and was rejected. There, the Court held that "personal care is clearly something distinct from supervision. We can discern from the definition of supervision that personal care requires something more, or at least different, than guidance and reminders to the residents." *Life Skills Village, PLLC*, ___ Mich App at ___; slip op at 6. Titan additionally argues that two sections of the AFCFLA: MCL 400.706(1) and MCL 400.703(4), conflict. Because this contention was first raised on appeal and lacks analytical support, we decline review. *Bonkowski v Allstate Ins Co*, 281 Mich App 154, 170; 761 NW2d 784 (2008); *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Plaintiffs additionally argue that the circuit court erred in denying their motion for reconsideration. Given our reversal of the circuit court's order granting summary disposition to Titan, we find it unnecessary to address this issue.

Reversed and remanded. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens
/s/ Thomas C. Cameron