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STATE OF MICHIGAN

COURT OF APPEALS

KARA PETERS,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION and JANICE HALLECK,

Defendants-Appellees.

UNPUBLISHED
June 10, 2021

No. 353864
Genesee Circuit Court
LC No. 18-111248-NI

Before: GADOLA, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Plaintiff, Kara Peters, appeals as of right the order of the trial court granting partial summary disposition to defendant, Auto Club Insurance Association (Auto Club), under MCR 2.116(C)(10) and dismissing without prejudice her claim for certain personal protection insurance (PIP) benefits under Michigan's no-fault insurance act, MCL 500.3101 *et seq*. We reverse and remand for further proceedings.

I. FACTS

On November 25, 2017, plaintiff was injured in an automobile accident while a passenger in a car owned by defendant Janice Halleck. Plaintiff suffered numerous injuries resulting in her hospitalization. After she was discharged from the hospital, plaintiff received additional medical treatment for her injuries from Insight Physical Therapy & Neuro Rehab Center (Insight).

At the time of the accident, Halleck was insured by a policy of no-fault insurance issued by Auto Club. The parties do not dispute that Auto Club is the highest priority insurer for purposes of plaintiff's claim for benefits.[1] Plaintiff brought this action against Halleck and Auto Club,

[1] Plaintiff claimed PIP benefits under MCL 500.3114(4)(a), which at the time of her accident provided that when a person not otherwise covered by a no-fault policy suffers bodily injury in a

alleging that she incurred medical expenses as a result of her injuries, that Auto Club's policy of no-fault insurance was in effect at the time of the accident, and that Auto Club failed to pay plaintiff PIP benefits owed under the policy.

Auto Club moved for partial summary disposition of plaintiff's claim for amounts allegedly owed to Insight. Auto Club asserted that plaintiff had submitted no evidence that Insight was seeking payment from her for medical care provided to her and that plaintiff therefore had not "incurred" the charges within the meaning of the no-fault act. Defendant supported its argument with an Insight billing statement indicating that Medicaid had paid $1,376.53 of plaintiff's medical expenses, stating an "Ins Bal" of $83,855.20, and stating a "Pt Bal" of "$ -."

At the hearing on the motion, Auto Club contended that the invoice demonstrated that Insight considered plaintiff's balance to be zero. The trial court noted that the last entry on the invoice for the patient balance in the Insight billing statement was not a zero, but a hyphen; nonetheless, the trial court found that "the patient balance is listed as zero dollars, and as of now, Medicaid is not pursuing reimbursement." The trial court concluded that plaintiff had not demonstrated that she had been billed directly by Insight, and found that "because the Insight bill is not an obligation of plaintiff, it cannot be an obligation of defendant Auto Club. In other words, it wasn't incurred." The trial court entered an order granting summary disposition to Auto Club regarding the amount sought by plaintiff for the medical billings from Insight.

Plaintiff moved for reconsideration of the order, asserting that there was a Medicaid lien for the amount paid by Medicaid, and that the Insight billing statement established that there was an insurance balance in the amount of $83,855.20. The trial court denied plaintiff's motion for reconsideration, concluding that because plaintiff failed to present documentary evidence establishing the existence of a factual dispute, the motion for partial summary disposition had been properly granted. Plaintiff now appeals.

II. DISCUSSION

Plaintiff contends that the trial court erred by granting partial summary disposition to Auto Club. Plaintiff argues that considering the documentary evidence in the light most favorable to her, the record does not support the trial court's finding that she has not "incurred" the Insight expenses within the meaning of the no-fault act. We agree.

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motor vehicle accident while an occupant of a motor vehicle, the highest priority insurer for PIP benefits is "[t]he insurer of the owner or registrant of the vehicle occupied." MCL 500.3114(4)(a), as amended by 2002 PA 38. This section was amended by 2019 PA 21, effective June 11, 2019, and currently provides that "a person who suffers accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle who is not covered under a personal protection insurance policy as provided in subsection (1) shall claim personal protection insurance benefits under the assigned claims plan under sections 3171 to 3175." MCL 500.3114(4).

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id*. at 160. Summary disposition under MCR 2.116(C)(10) is warranted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Id*.

The party moving for summary disposition under MCR 2.116(C)(10) is required to specifically identify the matters the party contends have no disputed factual issues, and has the initial burden to support its position by affidavits, depositions, admissions, or other documentary evidence. *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440; 814 NW2d 670 (2012). The burden then shifts to the nonmoving party to present evidence to demonstrate that a genuine issue of material fact exists. MCR 2.116(G)(4); *Bronson Methodist Hosp*, 295 Mich App at 441. When reviewing a motion for summary disposition granted under MCR 2.116(C)(10), we consider the documentary evidence submitted by the parties in the light most favorable to the nonmoving party, *El-Khalil*, 504 Mich at 160, and will find that a genuine issue of material fact exists if "the record leaves open an issue upon which reasonable minds might differ." *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citations omitted).

B. INCURRED EXPENSES

Under Michigan's no-fault act, insurers are required to provide first-party insurance benefits, referred to as personal protection insurance (PIP) benefits, for certain expenses or losses that fall into four categories, being survivor's loss, allowable expenses, work loss, and replacement services. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). In this case, the parties dispute plaintiff's entitlement to benefits for certain alleged allowable expenses.

Section 3107(1)(a) of the no-fault act, MCL 500.3107(1)(a), provides that PIP benefits are payable for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." In other words, under that statutory section an allowable expense is compensable if the claimant demonstrates that the expense was (1) for the injured person's care, recovery or rehabilitation, (2) reasonably necessary, (3) incurred, and (4) reasonable. *Douglas v Allstate Ins Co*, 492 Mich 241, 259; 821 NW2d 472 (2012). Thus, in this case, to establish entitlement to PIP benefits for the Insight charges plaintiff was required to demonstrate by a preponderance of the evidence that, among other things, the Insight charges were incurred within the meaning of the no-fault act. *Id*.

PIP benefits "accrue not when the injury occurs but as the allowable expense . . . is incurred." MCL 500.3110(4); *Karmol v Encompass Prop & Cas Co*, 293 Mich App 382, 389; 809 NW2d 631 (2011). An expense is considered to be incurred when the insured becomes liable to pay that expense. *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003). There must at least be evidence that the service provider expected to be paid for the services rendered, *ZCD Transp, Inc v State Farm Mut Auto Ins Co*, 299 Mich App 336, 342; 830 NW2d 428 (2013), and the right to PIP benefits arises "when the claimant finds himself or herself on the hook for an expense." *Karmol*, 293 Mich App at 390.

This Court has explained, however, that a claimant incurs expenses when he or she becomes liable for those expenses, regardless of whether an insurer ultimately bears the burden of payment. See *Clark v Al-Amin*, 309 Mich App 387, 397; 872 NW2d 730 (2015) ("An insured becomes liable for an expense when he accepts the medical treatment for which he (or his insurer) is being charged"); *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 638; 552 NW2d 671 (1996) ("Obviously, plaintiff became liable for her medical expenses when she accepted medical treatment. The fact that plaintiff had contracted with a health insurance company to compensate her for her medical expenses, or to pay directly the health care provider on her behalf, does not alter the fact that she was obligated to pay those expenses. Therefore, one may not reasonably maintain that plaintiff did not incur expenses"). Charges for healthcare thus are "incurred" when a person injured in a motor vehicle accident becomes liable for them by accepting medical treatment or service, even if the treatment or service is covered by an insurer. *Clark*, 309 Mich App at 397; *Shanafelt*, 217 Mich App at 638.

In this case, Auto Club argued that the Insight billing statement demonstrated that plaintiff was not being charged for the services, and therefore the services had not been "incurred." The trial court agreed and granted Auto Club summary disposition regarding the Insight charges. The trial court found that "[t]here is no admissible proof . . . that plaintiff was ever billed directly for the Insight PT and Neuro Rehab expenses." The trial court also observed that when a healthcare provider accepts payment from a health insurer as payment in full, the charges incurred by the injured party are limited to the reduced amount accepted by the provider. See *Bombalski v Auto Club Ins Assoc*, 247 Mich App 536, 546; 637 NW2d 251 (2001). Here, however, the only evidence presented to support Auto Club's contention that plaintiff had not incurred the charges was the Insight billing statement. The Insight billing statement states the charges amount as $95,791.20, payments as $1,376.53, adjustments as $10,559.47, "PT bal" as $-, and "Ins Bal" as $83,855.20. The billing statement, however, does not demonstrate that Insight did not expect to be paid in full for the invoiced amount, nor that Insight accepted the Medicaid payment as payment in full for services provided to plaintiff.

Auto Club asserts that if Insight intended to seek payment from plaintiff, it would not have listed the patient balance as zero on the billing statement, but would have listed both the patient balance and the insurance balance as $83,855.20.[2] The billing statement, however, does not demonstrate that Insight was not seeking payment for the services provided to plaintiff; rather, viewed in the light most favorable to plaintiff, the billing statement suggests that Insight expected payment for the services billed, albeit from an insurer. The Insight charges thus were "incurred" by plaintiff when she was treated, even if payment was expected from an insurer rather than from plaintiff. See *Clark*, 309 Mich App at 397. Whether Insight thereafter accepted the payment by Medicaid as payment in full for services provided to plaintiff is not demonstrated by the billing

[2] Defendant also asserts on appeal that Insight's claim for payment is statutorily barred by the statute of limitations and the one-year back rule stated in MCL 500.3145. This issue was neither raised in nor decided by the trial court, and we decline to address the issue here. See *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014).

statement, and thus, on the record before us a genuine issue of material fact exists on which reasonable minds could differ.

As the party moving for summary disposition under MCR 2.116(C)(10), Auto Club had the initial burden to demonstrate that there was no genuine issue of material fact on the matter that it had identified as dispositive, being whether plaintiff had incurred the Insight charges. See *Bronson Methodist Hosp*, 295 Mich App at 440. Because Auto Club failed to carry that burden, the trial court erred by granting Auto Club partial summary disposition of plaintiff's claim.

We reverse the trial court's order granting partial summary disposition in favor of Auto Club and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ David H. Sawyer
/s/ Michael J. Riordan