

STATE OF MICHIGAN
COURT OF APPEALS

JACK CAMPBELL,

Plaintiff-Appellant,

v

No. 113634

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

Before: Cynar, P.J., and Marilyn Kelly and T.G. Kavanagh,* JJ.
PER CURIAM.

Plaintiff filed the instant action to recover personal injury protection benefits allegedly due and owing under the Michigan no-fault insurance act, MCL 500.3101 et seq.; MSA 24.13101 et seq., for injuries sustained in a motorcycle accident occurring while plaintiff was en route to Air National Guard training. Subsequent to the filing of the instant suit, the parties resolved all differences existing between them as to the nature and extent of benefits owed plaintiff with the exception of one. Defendant argued that it is entitled to setoff the amount of income plaintiff received from the United States Air Force in active duty pay and disability retirement pay against the amount owed in work-loss benefits. (At the time of the accident, plaintiff was both on "active duty" with the Air National Guard and employed by Betz Foundry.) Plaintiff argued that the benefits he receives from the Air Force were not triggered by his accident and, therefore, that defendant is not entitled to a set-off pursuant to MCL 500.3109; MSA 24.13109. The circuit court agreed with defendant and entered an order of summary disposition in favor of defendant. MCR 2.116(I)(2). Plaintiff appeals by right.

A no-fault insurer is entitled to set off certain payments received by its injured insured. MCL 500.3109(1); MSA 24.13109(1):

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment.

Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury.

Our Supreme Court has stated:

[T]he correct test is: state or federal benefits "provided or required to be provided" must be deducted from no-fault benefits under §3109(1) if they:

1) Serve the same purpose as the no-fault benefits, and

2) Are provided or are required to be provided as a result of the same accident. [Jarosz v DAIE, 418 Mich 565, 577; 345 NW2d 563 (1984). (Footnote omitted.)]

In order to determine whether the first prong of the test set forth in Jarosz has been satisfied,

a particularized assessment of the questioned governmental benefit is necessary to identify the ultimate beneficiary, the nature of the benefits, the reason for paying them, and the events triggering entitlement to them. [Id. at p 580.]

A review of the record in the instant case reveals that the circuit court did not engage in "a particularized assessment of the questioned governmental benefit[s]" as required by Jarosz, supra. The record also reveals that neither party identifies under which statute or statutes plaintiff is receiving benefits from the Air Force. We believe that the identity of the federal statute or statutes involved is crucial to a resolution of plaintiff's claim. Accordingly, we vacate the order of the circuit court and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Walter P. Cynar
/s/ Marilyn Kelly
/s/ Thomas G. Kavanagh