

STATE OF MICHIGAN
COURT OF APPEALS

MOHAMMAD AHMAD,

APR 12 1990

Plaintiff-Appellant,

v

No. 116178

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

MOHAMMAD AHMAD,

Plaintiff-Appellee,

v

No. 116793

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Before: Reilly, P.J., and Gillis and Cynar, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals as of right from the circuit court's denial of his motion for attorney fees pursuant to MCL 500.3148; MSA 24.13148. Defendant cross-appeals as of right from the circuit court's award of \$3,750 in mediation sanctions in its favor pursuant to MCR 2.403(O). We reverse and remand for: 1) a determination of the amount to be awarded as attorney fees and; 2) an evidentiary hearing and redetermination of the amount to be awarded as mediation sanctions.

I

Plaintiff contends that the circuit court erred in denying his request for attorney fees because defendant unreasonably refused to pay plaintiff's claim for no-fault benefits. We agree.

The no-fault act was designed to afford prompt and adequate reparation for economic losses, such as medical

expenses, incurred by individuals injured in motor vehicle accidents. Shavers v Attorney General, 402 Mich 554, 578-579; 267 NW2d 72 (1978) (opinion by Williams, J.), aff'd 412 Mich 1105 (1982). MCL 500.3148(1); MSA 24.13148(1), authorizes an award of attorney fees under the no-fault act when "the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment." It is well settled that refusal or delay in making payment of no-fault benefits is not unreasonable when there is a bona fide factual uncertainty or a legitimate question of statutory construction or constitutional law. Nelson v DAIIE, 102 Mich App 636, 650; 302 NW2d 260 (1981), lv den 411 Mich 1079 (1981). A circuit court's finding of unreasonable refusal or delay will not be reversed on appeal unless it is clearly erroneous. Id.

In the instant case, defendant does not deny that plaintiff was involved in an automobile accident and that he suffered injuries for which at least some treatment was "reasonably necessary." MCL 500.3107; MSA 24.13107. Rather, defendant apparently refused payment of plaintiff's medical expenses on the basis of the determination by Blue Cross, plaintiff's primary health insurer under his coordinated insurance policy, that plaintiff should have been treated as an outpatient rather than as an inpatient. Due to the clear proof of accident and the fact that plaintiff sustained injuries requiring medical attention which were compensable under the no-fault act, we conclude that defendant could not reasonably refuse payment of no-fault benefits because of another insurer's assertion that it found inappropriate the choice of inpatient treatment rendered by plaintiff's physician. There is no evidence which suggests that Blue Cross' rejection of plaintiff's claimed medical expenses is a valid basis for rejection by defendant. In fact, there is no evidence that Blue Cross' policy controls payments by defendant for "reasonably necessary" medical expenses.

Accordingly, we reverse the circuit court's decision that defendant's refusal to pay benefits was not unreasonable and remand for a determination of attorney fees under MCL 500.3148; MSA 24.13148(1).¹

II

We agree with defendant that the circuit court committed error requiring reversal in failing to articulate the basis for its arbitrary determination that defendant was entitled to only thirty hours of attorney fees as mediation sanctions pursuant to MCR 2.403(0). See Desender v DeMeulenaere, 12 Mich App 634; 163 NW2d 464 (1968); Petterman v Haverhill Farms, 125 Mich App 30, 32-33; 335 NW2d 710 (1983). Accordingly, we reverse and remand for an evidentiary hearing and a redetermination of attorney fees and costs. In making its award, the circuit court should determine a reasonable fee based on the particular facts of this case as well as the factors set forth by this Court in Crawley v Schick, 48 Mich App 728, 737-738; 211 NW2d 217 (1973).

Reversed and remanded for further proceedings consistent with our opinion. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly
/s/ John H. Gillis
/s/ Walter P. Cynar

¹ We note that the defendant insurance company was not notified of the refusal of Blue Cross to pay the hospital expenses until September, 1987, subsequent to the filing of plaintiff's complaint in February, 1986, but prior to trial. We urge the trial court to consider these circumstances in determining an award of attorney fees.