

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff/Counterdefendant,

and

HORLEY MEDICAL CENTER,

Intervening Plaintiff/Cross-
Plaintiff,

v

No. 114379

GERALD STILES, conservator of the
estate of HEATHER STILES,

Defendant/Counterplaintiff/
Cross-Defendant/Cross-Plaintiff
Third-Party Plaintiff/Appellant,

and

GREATER FLINT HMO,

Defendant/Counterplaintiff/
Cross-Plaintiff/Appellee,

and

HEALTHPLUS OF MICHIGAN,

Third-Party Defendant/Appellee.

Before: Holbrook, Jr., and McDonald and Jansen, JJ.

PER CURIAM.

Gerald Stiles, conservator of the estate of Heather Stiles, appeals as of right from a March 24, 1989, order finding plaintiff Citizens Insurance primarily liable for Heather Stiles medical expenses, and defendants' Greater Flint HMO and Healthplus of Michigan coordination of benefits clauses preclusive to double recovery for said expenses. We affirm.

Heather Stiles, a minor, was injured when a truck struck the off-road vehicle in which she was a passenger. It is undisputed that Citizens, the no fault insurer of the automobile that struck Heather, bears primary responsibility for payment for

her injuries. Appellees, Greater Flint HMO (GFHMO) and Healthplus of Michigan (HPM) are the health maintenance organizations to which Heather's father and stepmother respectively belong. The issue on appeal is whether given Citizen's primary liability, duplicative recovery for Heather's expenses may also be had from GFHMO or HPM.

In the course of the instant suit, as of January 1, 1987, GFHMO changed to Blue Care Network (BCN). The certificate of coverage also changed. Thus, a dispute arose as to which coverage applied, the certificate in effect in 1986 or the 1987 certificate. On appeal appellant first argues that even if the 1986 coverage did not allow duplication, the new BCN coverage does. Although we believe the trial court erred in ruling the 1986 certificate of coverage applicable to all expenses, including those incurred post change, GFHMO now concedes the 1987 certificate is also applicable. However, GFHMO contends duplicative recovery is precluded under the new policy. We agree.

Appellant relies on the following language contained in the BCN certificate:

Benefits under this Certificate exclude services and treatment for any work related injury to the extent that benefits are paid or payable under any workers' compensation program or other similar program. Where services are provided by Health Plan, Health Plan is assigned the Member's rights to seek reimbursement from the other program or insurer. Benefits under this Certificate will not be reduced because of the existence or coverage under a Member's non-coordinated no-fault automobile policy. If the member is covered by a coordinated no-fault automobile policy, the health plan will assume primary liability to provide benefits available under this Certificate in accordance with this Certificate's terms and conditions. (Emphasis added.)

However as noted by GFHMO, this language prevents reduction of benefits due to the existence of coverage under a members non-coordinated no-fault automobile policy. The instant case involved a third party's non-coordinated no-fault automobile policy, not the member's, Stiles, policy. This limitation on

duplicative recovery is indicated in two additional sections of the policy.¹ Thus, although the language of the BCN policy allows for duplicative recovery where a member's non-coordinated no-fault insurance carrier is primarily liable, such is not the facts of the instant case.

We also reject appellant's claims of invalidity pertaining to the coordination of benefits clauses contained in HPM's policy and GFHMO's 1986 policy. Appellant's arguments address improper exclusions, not limitations imposed by coordination of benefits clauses. Moreover, we find neither clause ambiguous.

Affirmed.

/s/Donald E. Holbrook, Jr.
/s/Gary R. McDonald
/s/Kathleen Jansen

¹ 3.01 NONDUPLICATION

Health Plan provides each Member with full health care services within the limits of this Certificate. Health Plan does not duplicate benefits provided or paid for by another party nor provide a Member with greater benefits than the actual expenses incurred. Benefits under this Plan will be reduced to the extent that they are available or that reimbursement is payable under any other group certificate, group insurance policy, or other group program covering the Member whether or not a claim is made for the benefits. Benefits will be coordinated, as outlined below, to provide 100% coverage wherever possible for services covered in whole or in part under either plan but in no event will benefits be provided which would result in payments in excess of 100% of the total amounts to which providers or Members are entitled. . . . (Emphasis added).

3.04 SUBROGATION

A. Subrogation means that Health Plan will have the same right as a Member to recover expenses for treatment of an injury or illness for which another person or organization is legally liable. To the extent Health Plan will be subrogated to the Member's right to recovery against the responsible person or organization. Health plan will not subrogate against insurers on policies issued to and in the same of the Member.