:3378

STATE OF MICHIGAN

COURT OF APPEALS

CHARLENE KERBY,

Plaintiff-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

February 20, 1991
9:10 a.m.
FOR PUBLICATION

No. 122270

Before: Doctoroff, P.J., and Maher and Cavanagh, JJ.

PER CURIAM.

Defendant, as plaintiff's no-fault insurance carrier, appeals as of right from an order granting plaintiff's motion for partial summary disposition. We reverse.

In 1986, plaintiff began operating an adult foster care home which she ran by herself, doing the cooking, cleaning, and general maintenance. In September, 1987, plaintiff was involved in an automobile accident, sustaining injuries preventing her from running the home. Consequently, plaintiff hired replacement workers to perform the work she could no longer perform.

Although plaintiff was paid personal protection insurance benefits, including work loss benefits, pursuant to MCL 500.3107(b); MSA 24.13107(b), plaintiff commenced the instant action claiming she was not paid the full amount of benefits to which she was entitled under § 3107(b).

Based upon a determination that plaintiff was 100% disabled, and using plaintiff's 1987 income tax return, defendant determined the amount of reimbursable work loss benefits due plaintiff under § 3107(b) to be $17,440 annually. Plaintiff claims, however, that in addition to this amount, she is also entitled to be reimbursed for the cost of hiring others to run the foster home. Defendant denied liability for such expenses. The parties filed cross motions for summary disposition and the trial court ruled in favor of plaintiff, finding that replacement business services were reimbursable as wage loss benefits under § 3107(2).

Defendant now appeals as of right, claiming that benefits for replacement business services are not reimbursable as a wage loss benefit. We agree.

Section 3107 of the Michigan No-Fault Insurance Act provides, in pertinent part:

> Personal protection insurance benefits are payable for the following:
>
> * * *
>
> (b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured and expenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.

There is apparently no dispute that expenses for replacement business services are not reimbursable under the latter "replacement services" component of § 3107(b), as the statute expressly limits reimbursement

for replacement services to those services necessary for the benefit of the injured person, not for income. With respect to the "work loss" component of § 3107(b), the plain language of the statute defines work loss as "loss of income from work." As noted in Miller v State Farm Mutual Automobile Ins Co, 410 Mich 538, 563; 302 NW2d 537 (1981), reh den 411 Mich 1154 (1981), work loss benefits are limited, by definition to loss of wage or salary income.

Thus, plain language of the statute appears to preclude reimbursement for replacement business services as work loss benefits. Additionally, in Adams v Auto Club Ins Assn, 154 Mich App 186, 192; 397 NW2d 262 (1986), lv den 428 Mich 870 (1987), this Court held that where the claimant is a self-employed individual, loss of income contemplates the deduction of business expenses.

We also note that the no-fault act was patterned after the Uniform Motor Vehicle Accident Reparations Act (UMVARA). MacDonald v State Farm Ins Co, 419 Mich 146, 151; 350 NW2d 233 (1984). Section (1)(a)(5)(ii) of the UMVARA, the counterpart to § 3107(b) in the no-fault act provides:

> "work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake. [Emphasis added.]

While the emphasized language in the UMVARA would arguably include, as work loss, those replacement service expenses sought by the plaintiff in this case, this language was not included within the definition of work loss under § 3107(b) of the no-fault act. Thus, it may be presumed that the Legislature considered but rejected the proposed language in the UMVARA, and, by doing so, did not intend for replacement service expenses to be recoverable as work loss benefits under the no-fault act. Michigan Mutual Ins Co v Carson City Texaco, Inc, 421 Mich 144, 148; 365 NW2d 89 (1984); Spencer v Hartford Accident and Indemnity Co, 179 Mich App 389, 399; 445 NW2d 520 (1989).

Accordingly, based on our review of the plain language of § 3107(b) as well as prior case law and the Legislature's decision to reject the broader language in the UMVARA, we conclude that the trial court erred in holding that plaintiff's business replacement expenses were recoverable as "work loss" benefits under § 3107(a) of the no-fault act.[1]

Reversed.

/s/ Martin M. Doctoroff
/s/ Richard M. Maher
/s/ Mark J. Cavanagh

[1] We disagree with the trial court's conclusion that where a self-employed injured person uses funds received as work loss benefits to hire a replacement, he has no means of recovering those funds. For, if a replacement is hired, and thus, the business continued, income will continue to be generated by the business. Indeed, if the plaintiff in this case were permitted to be recover her business replacement expenses, she would effectively be receiving not only the benefits based on her annual net income, but also the income generated from the continued operation of the business, with the salary of the business replacements being paid by defendant. Surely, this is not the intent of § 3107(b).