STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

MICHIGAN INSURANCE BUREAU and MICHIGAN CHIROPRACTIC SOCIETY,

Defendants-Appellees.

December 29, 1992

No. 133952

UNPUBLISHED

Before: Weaver, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Plaintiff, Auto Club Insurance Association, issued an insurance policy known as Form #6500-1207-57. This form stated:

> If the Declaration Certificate shows "COORDINATED MEDICAL BENEFITS," you or a resident relative must first obtain benefits from any other health or accident insurance or plan. We will pay Medical Benefits in excess of any valid limitations as to amount or duration of benefits under the other plan. We will pay Medical Benefits for services not available from the other plan or insurance only if they are reasonably necessary for the injured person's care, recovery or rehabilitation.

On April 21, 1989, the Insurance Bureau (defendant) determined that the form as interpreted by plaintiff violated the insurance code in two respects. First, plaintiff would not pay for chiropractic services performed on a policyholder if the policyholder had a Health Maintenance Organization (HMO) that did not provide chiropractic services. The bureau determined this practice to be violative of § 3107 of the code which requires no-fault insurers to pay "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation." And secondly, the form was ambiguous in that it did not give notice to the insured that the policy would not compensate for chiropractic services not covered by an HMO. As such, defendant withdrew approval of plaintiff's form.

Plaintiff contested the withdrawal on the basis that the insured's HMO would provide component care for the injuries and that chiropractic services were unnecessary. Before the hearing, Michigan Chiropractic Society was granted the right to intervene in this matter. At the hearing, defendant moved for summary disposition, which was denied by the administrative law judge. Defendant appealed that denial to the commissioner of insurance, who requested briefs and oral arguments on the matter. On April 16, 1990, the acting commissioner of insurance issued his final decision affirming the withdrawal of approval on both grounds stated above.

On April 30, 1990 plaintiff filed a petition for review in the circuit court, which affirmed the insurance commissioner's decision.

Plaintiff now appeals. We agree that the disputed clause is ambiguous and affirm the withdrawal of approval.

We find the first and third sentences to be contradictory. The first sentence tells the insured to first seek benefits from the health care provider, attempting to eliminate coverage under Tousignant v Allstate Ins Co, 193 Mich App 415; 484 NW2d 404 (1992). However, the third sentence contradicts the first sentence by stating that plaintiff will cover any services not provided by the health care provider.

If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances, and another fair reading of it leads one to understand there is no coverage under the same circumstances, the contract is ambiguous and should be construed against its drafter and in favor of coverage. Auto Club Ins Co v DeLaGarza, 433 Mich 208; 444 NW2d 803 (1989).

We affirm.

/s/ Elizabeth A. Weaver
/s/ Gary R. McDonald
/s/ Janet T. Neff