

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT E. STEINHAUER,

April 26, 1993

Plaintiff-Appellant,

v

No. 140647

PREFERRED RISK MUTUAL INSURANCE,  
a foreign corporation,

Defendant-Appellee.

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Before: Connor, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

In this action for personal injury protection (PIP) benefits under a no-fault insurance policy, the plaintiff appeals as of right from an April 26, 1991 order granting the defendant's motion for summary disposition. We affirm.

Plaintiff alleged in his complaint that he suffered serious back injuries in an August 22, 1984 automobile accident that prevented him from returning to his former employment. Plaintiff also alleged that the defendant no-fault insurer had refused to pay certain vocational rehabilitation benefits, including the purchase of a taxicab. Asserting that a taxicab was not an allowable vocational rehabilitation expense under MCL 500.3107; MSA 24.13107, the defendant filed for summary disposition under MCR 2.116(C)(8) and (10). In answering the motion, the plaintiff admitted that his request for the cab was an attempt to increase his current wages to his pre-accident wage level. Plaintiff further contended that whether the cab is reasonably necessary for his vocational rehabilitation is a question of fact to be resolved at trial.

The circuit court failed to identify which court rule was the basis of its decision to grant the defendant's motion. We will review the decision under MCR 2.116(C)(10) because the circuit court decided the motion using the undisputed facts in determining the factual basis for the complaint. See Jones v Employers Ins of Wausau, 157 Mich App 345, 349-350; 403 NW2d 130 (1987).

MCL 500.3107; MSA 24.13107 provides that PIP benefits are payable for allowable expenses including an injured person's vocational rehabilitation. See Bailey v DAIFE, 143 Mich App 223; 371 NW2d 917 (1985). There are three basic requirements for an expense to be allowable: (1) the charge must be reasonable, (2) the expense must be reasonably necessary, and (3) the expense must be incurred. Nasser v Auto Club Ins Ass'n, 435 Mich 33, 50; 457 NW2d 637 (1990). Although the question whether expenses are reasonable and reasonably necessary is generally one of fact for the jury, the court may decide the question of the reasonableness or necessity of the particular expenses as a matter of law. Id., at 55. Consequently, this Court will review the evidence in a light most favorable to the plaintiff as the nonmoving party to determine if the cab was reasonable and necessary. Id.

In the present case, we find particularly troublesome the plaintiff's admission that he sought the cab as a rehabilitative vocational expense because it would allow him to increase his wages to their pre-accident level. After the accident, the defendant provided PIP benefits, including work loss benefits, to the plaintiff for three years. The evidence shows that the defendant is now driving a cab and earning forty percent of his fares, but if he owned a cab, he could earn seventy percent of his fares. This Court in Marquis v Hartford Accident & Indemnity (On Remand), 195 Mich App 286, 289; 489 NW2d 207 (1992), lv pending, recently held that the no-fault insurance act defines "work loss" as actual loss of income, and that it does not include

loss of earning capacity. Because the Legislature did not intend for work loss benefits to extend beyond three years or to allow a recovery of lost earning capacity, we find it reasonable to conclude that the Legislature did not intend an injured person to recover lost earning capacity under the guise of rehabilitative expense. Plaintiff's request to have the defendant purchase a cab is more analogous to asking the defendant to increase his earning capacity than it is to vocational rehabilitation. We conclude as a matter of law that the cab was not reasonable and necessary as a rehabilitation expense. Thus, the circuit court did not err in granting the defendant summary disposition.

Affirmed.

/s/ Michael J. Connor  
/s/ Donald E. Holbrook, Jr.  
/s/ Gary R. McDonald