

STATE OF MICHIGAN  
COURT OF APPEALS

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LATONYA HICKS, a minor, by her next  
friend, CAROLYN JEAN HICKS, and  
CAROLYN JEAN HICKS, individually,

Plaintiffs-Appellants,

v

CITIZENS INSURANCE COMPANY,  
a Michigan corporation,

Defendant-Appellee.

March 8, 1994  
9:30 a.m.  
FOR PUBLICATION

No. 138159  
LC No. 89 929582 CK

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CHILDREN'S HOSPITAL OF MICHIGAN,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY,  
a Michigan corporation,

Defendant-Appellee.

No. 147454  
LC No. 91 112487 CK

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Before: Wahls, P.J., and Reilly and R.M. Daniels,\* JJ.

PER CURIAM.

LaTonya Hicks (Plaintiff), a minor, by her mother Carolyn Hicks, as her next friend, appeals as of right a circuit court order granting summary disposition to defendant, Citizens Insurance Company. We reverse. Because of our resolution of the issues in this case, the issues raised in the consolidated case, Children's Hospital of Michigan v Citizens Ins Co, No. 147454, are rendered moot.

The facts in this case are undisputed. Plaintiff, while walking across a highway, was struck and seriously injured by an automobile driven by Woodrow Ford. No one in the Hicks family had auto insurance, and no other auto insurance was available to plaintiff, so the case was randomly assigned to Citizens under the assigned claims plan, MCL 500.3171 et seq.; MSA 24.13171 et seq., on January 31, 1989.

Plaintiff was hospitalized and treated for her injuries on two different occasions at Children's Hospital of Michigan (Children's). Citizens paid the full amount of the bill for the first hospitalization, from September 11, 1988, until October 28, 1988, without protest. Plaintiff was also hospitalized and received outpatient treatment between December 22, 1988, and June 22, 1989. She incurred medical expenses amounting to \$145,941.63 during that period.

Apparently under the impression that plaintiff and her family were indigent, Children's billed the Michigan Department of Social Services (DSS) for medicaid benefits to partially cover the medical expenses associated with the second period of treatment. The DSS, also apparently under the impression that the Hicks family was indigent, determined the statutory amount allowable for the treatment and reimbursed Children's a total of \$62,497.55. As subrogee of plaintiff, the DSS then sought and received from Citizens full reimbursement of the monies that the DSS paid to Children's.

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\*Circuit Court judge, sitting on the Court of Appeals by assignment.

Citizens refused to pay the remainder of the medical bill to either plaintiff or the hospital, contending that payment of medicaid benefits on behalf of plaintiff totally discharged her and her family from any further responsibility for payment for medical treatment rendered by Children's. It is Citizens position that if plaintiff cannot be held responsible for the remainder, Citizens, her assigned insurer, cannot be obligated to pay that amount. We disagree.

When plaintiff was injured in the automobile accident, she was entitled to receive no-fault PIP benefits under the assigned claims plan. MCL 500.3172(1); MSA 24.13172(1); MCL 500.3107(a); MSA 24.13107(1). The availability of those benefits rendered the plaintiff medically non-indigent and, therefore, ineligible for medicaid benefits. MCL 400.106(1)(b)(ii); MSA 16.490(16)(1)(b)(ii); Johnson v Michigan Mutual Ins Co, 180 Mich App 314, 320-321; 446 NW2d 899 (1989). See also, Workman v DAHE, 404 Mich 477, 501-502; 274 NW2d 373 (1979).

The fact that, with hindsight, medicaid benefits were mistakenly paid on plaintiff's behalf does not release plaintiff's responsibility for the medical expenses incurred but not paid for, nor does it bind Children's to limit its claim to the statutory amount allowed for medicaid benefits. Botsford General Hospital v Citizens Ins Co, 195 Mich App 127; 489 NW2d 137 (1992). Any agreement between Children's and the DSS to make or accept payments in violation of the law is not enforceable. See Meek v Wilson, 283 Mich 679; 278 NW 731 (1938); Milliken v Naph-Sol Refining Co, 302 Mich 410; 4 NW2d 707 (1942); Gibson v Martin, 308 Mich 178; 13 NW2d 252 (1944). Citizens may not rely on that unenforceable agreement to avoid its obligations as the assigned insurer. As such, Citizens is obligated to pay PIP benefits to or on behalf of plaintiff, including reasonable and customary medical expenses. MCL 500.3112; MSA 24.13112; Commire v Automobile Club of Michigan Ins Group, 183 Mich App 299, 302; 454 NW2d 248 (1990). Consequently, Citizens is required to pay plaintiff for the reasonable and customary medical expenses incurred by her at Children's. Botsford supra.

Although the DSS has been made whole by Citizens' payment to DSS, and Children's has been paid \$62,497.55 towards plaintiff's bill, \$83,444.00 is still due and owing by plaintiff to Children's. Plaintiff submitted an affidavit from the director of patient accounting for Children's stating that the charges for the second period of treatment were customary charges for hospital services. Citizens did not dispute that affidavit, submit a counter-affidavit, or challenge the reasonableness of the bill. Therefore, there was no genuine issue of material fact and plaintiff was entitled to summary disposition as a matter of law. MCR 2.116(C)(10). Citizens is responsible for the payment of the remaining amount due on Children's bill. As the trial court erred in granting summary disposition to Citizens, we reverse and remand for entry of summary disposition in favor of plaintiff on her claim for the unpaid medical expenses for the second period of treatment at Children's.

In view of this ruling, the issues relating to the plaintiff's request to add Children's as a plaintiff, and the issues raised in the consolidated case, Children's Hospital of Michigan v Citizens Ins Co, are rendered moot.

Reversed and remanded.

/s/ Myron H. Wahls  
/s/ Maureen Pulte Reilly  
/s/ R. Max Daniels

<sup>1</sup> Although the trial court relied on Sheels v Farmers Ins Exchange, 146 Mich App 361; 379 NW2d 493 (1986) in making its ruling, we are bound by and agree with the decision in Botsford supra rendered subsequent to the trial court's decision. Administrative Order No. 1990-6.