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August 18, 1986

Mr. George Sinas
Atty at Law
520 Seymour Street
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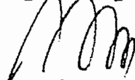
Dear George:

I am herewith enclosing an opinion which I have received from Judge Ed Sosnick of the 48th District Court. I believe this is an interesting case dealing with the recovery of expenses for a Christial Science practitioner who was used relative to the Plaintiff's husband's rehabilitation. The Defendant moved for Summary Disposition claiming as a matter of law that Christian Science treatment is not an allowable expense under 3107(a). The Court held as a matter of law that it was an allowable expense.

The Judge called me and wanted to know whether we would b e interested in this kind of an opinion and I said we would. I would suggest its possible inclusion in the Newsletter as well as your No-Fault book. It appears to be a case of first impression.

Very truly yours,



Sherwin Schreier

SS/sk
Enclosure

cc: Bob Grosyner
Linda Atkinson

STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE 48TH JUDICIAL DISTRICT

IRA LYNN STEPHENSON and
JACQUELINE STEPHENSON,

Plaintiffs,

-v-

Case No. 853-0221 CK 1

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

_______________________________/

O P I N I O N

PROCEDURAL BACKGROUND

This case of first impression comes before this court on defendant's motion for summary disposition, pursuant to MCR 2.116 (c)(8) and MCR 2.116(c)(10). Plaintiffs, the insured, brought suit against defendant, their insurer, for the recovery of expenses for a Christian Science Practitioner they engaged for plaintiff husband's rehabilitation. Defendant moves for summary disposition, claiming that first, as a matter of law, Christian Science treatment is not an "allowable expense" within the meaning of the Michigan No-Fault Act, MCLA 500.3107(a), and, secondly, that this expense is not "reasonably necessary" within the meaning of this same statute.

A motion for summary disposition pursuant to MCR 2.116(c)(8) must be tested on the pleadings alone. A motion for summary disposition pursuant to MCR 2.116(c)(10) is designed to test whether there is factual support for a claim, based on pleadings, depositions, briefs and other documentary evidence then available. Rizzo v. Kretschmer, 389 Mich 363 (1973). The party opposing the motion for summary judgment must come forward to establish the existence of a genuine issue of material fact. If the nonmoving

party fails to establish a material fact, then the motion is properly granted. Bob v. Holmes, 78 Mich App 205 (1977).

In viewing the evidence in a light most favorable to the plaintiffs, and granting them every reasonable inference and resolving any conflict in the evidence in their favor, Rushing v. Wayne County, 138 Mich App 121 (1984), this court must determine whether plaintiff's claim raises any genuine issue of material fact, thereby surviving defendant's motion for summary disposition.

FINDINGS OF FACT

This case arises from an automobile accident that occurred on January 28, 1984. The plaintiffs, Ira Lynn Stephenson and his wife, Jacqueline Stephenson, were riding in their Jeep when it overturned as plaintiffs attempted to avoid collision with another oncoming motor vehicle. Plaintiff, Mr. Stephenson, suffered injuries more severe than those of plaintiff, Mrs. Stephenson. After the roll-over, Mr. Stephenson was found in the backseat of the Jeep and was immediately brought to the emergency room at St. Joseph Mercy Hospital. He suffered a closed head injury and was rendered in a comatose state for a portion of his hospital stay. Plaintiff, Mr. Stephenson, was admitted to the hospital on January 28, 1984 and was discharged on February 17, 1984.

At the time of this accident, plaintiffs, The Stephensons, were insured by defendant, State Farm Mutual Automobile Insurance Company. Defendant, State Farm, has already paid the plaintiffs for expenses incurred pursuant to conventional medical treatment such as ambulance, radiology and emergency room care. Plaintiff, Mrs. Stephenson, engaged a Christian Science Practitioner to assist in the rehabilitation of her husband, plaintiff Mr. Stephenson, while he was in a comatose state in the hospital. In accordance with the Christian Science faith, all treatment for the patient was done through prayer. In this case, the Christian Science Practitioner conducted all treatment with plaintiff, Mr. Stephen-

son via telephone.

Plaintiffs, The Stephensons, claim damages of $1775.00 of defendant, State Farm, the amount apparently of the services rendered by the Christian Science Practitioner. Defendant, State Farm, refuses to pay for such expenses, claiming that such treatment is, first, not an "allowable expense" within the meaning of the Michigan No-Fault Act, MCLA 500.3107(a) and, secondly, that such treatment was not "reasonably necessary" within the meaning of this same statute. Defendant, State Farm, moves for summary disposition on these two grounds. Plaintiffs have demanded a trial by jury.

APPLICABLE LAW

This dispute arises entirely out of the two parties' disparate interpretation of the following section of the Michigan No-Fault Act, MCLA 500.3107(a), Personal protection insurance benefits, allowable expenses, work loss:

"Personal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's car, recovery or rehabilitation . . ." (emphasis added)

The task at hand for this court is to interpret the above-emphasized language of this section of Michigan's No Fault Act. More specifically, this court must determine first whether services of a Christian Science Practitioner fall within the ambit of "allowable expenses" under the statute and, secondly, whether, even if allowable, such expenses were "reasonably necessary" for the rehabilitation of plaintiff, Mr. Stephenson.

As another preliminary matter to the analysis of these two issues, this court takes notice, from the onset, that Christian Science Practitioners are specifically exempt from regulation,

licensing and review boards under the Medical Practices Act. The pertinent section, MCLA 338.1816, ministering to the sick or suffering by spiritual means, reads: "This act or rules promulgated pursuant thereto do not apply to a person who, in good faith, ministers to the sick or suffering by spiritual means alone, through prayer, in the exercise of a religious freedom, . . . if he does not hold himself out to be, a physician or surgeon." (emphasis added) There is no dispute in the case at bar that the Christian Science Practitioner never held himself out to be a physician. He therefore is exempted from all provisions of the Medical Practices Act.

I. ALLOWABLE EXPENSES

CONCLUSIONS OF LAW

In this case of first impression, the first issue before this court is whether the services of the Christian Science Practitioner are "allowable expenses" within the meaning of the relevant section of the Michigan No-Fault Act, MCLA 500.3107(a). This court first looks to general principles of statutory construction to interpret this term. The starting point is always a determination of the Legislature's intent. Harrow v. Metropolitan Life Ins. Co., 285 Mich 349 (1938). The legislative purpose in enacting the no-fault statute was to create a comprehensive scheme to provide sure and speedy compensation for certain economic losses resulting from motor vehicle accidents. Belcher v. Aetna Casualty & Surety Co., 409 Mich 231, (1980). This court will construe the relevant terms in light of this purpose.

Along with these general principles, however, there are specific principles of construction concerning insurance policies themselves. To begin, insurance contracts must be liberally construed in favor of the policyholder or beneficiary wherever possible, and strictly construed against the insurer. New England Mutual Life Ins. Co. v. Gray, 590 F.Supp. 615 (1984). Moreover,

any ambiguities in the policy of insurance that is drafted by the insurer are to be construed against the insurer. New England Mutual Life Ins. Co., 590 F. Supp. at 622. Finally, technical construction of terms in an insurance policy are disfavored. Hockey Club of Saginaw v. Ins. Co. of N.A., 468 F.Supp. 101 (1979). Therefore, wherever possible and reasonable, the term "allowable expenses" as incorporated into the insurance policy contract between plaintiffs and defendant will be construed in a manner that is favorable to the policyholders, the plaintiffs in this case.

Next, we turn to case law for guidance as to what types of services for rehabilitation fall within the ambit of "allowable expenses" under this particular section of the No-Fault Act. The Michigan Court of Appeals recently defined this term, when used in reference to this type of insurance, as: "reasonable charges incurred for reasonably necessary products, services, and accommodations for an eligible injured person's care, recovery or rehabilitation, including, but not limited to, expenses for medical, hospital nursing, x-ray . . . services . . ." Sharp v. Preferred Risk Ins. 142 Mich App 499, 506 (1985). (emphasis added) In Sharp, the appellate court unanimously held that defendant insurance company had to pay for the at-home nursing services that the mother of the brain-damaged young man performed on a constant basis for her son, who was injured in an automobile accident. The Sharp court sets forth the current state of the law on this subject which is that "allowable expenses" for rehabilitation under this statute are to be interpreted broadly, and include at-home nursing expenses. See also Van Marter v. American Fidelity, 144 Mich App 171 (1982). Visconti v. DAIIE, 90 Mich App 477 (1979).

It is also interesting to note that the definition of "allowable expenses" used by the Sharp court is incorporated into the Standard Jury Instructions concerning the Michigan No-Fault Act. This section, SJI2d 35.01 No-Fault First-Party Benefits Action: Explanation of Statute, reads: "a) The first type of

benefit is known as "allowable expenses"and consists of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured persons care, recovery or rehabilitation. Allowable expenses include, but are not limited to, medical expenses." (emphasis added) It is the view of this court that, pursuant to case law and the Standard Jury Instructions, the term "allowable expenses" is to be construed broadly as meaning something more than conventional medical services alone.

As to this very issue, defendant contends that services rendered by the Christian Science Practitioner in this case are unconventional and therefore not compensable under the statute. In answer to this contention, this court would emphasize the holding reached by the Michigan Court of Appeals in Van Marter v. American Fidelity, 114 Mich App 171 (1982). In reviewing which services relating to the rehabilitation of an injured person are compensable under MCLA 500.3107(a), the court specifically held that "the statute does not require that these services be supplied by 'trained medical personnel'." Van Marter, 114 Mich App at 180. This court has already noted that Christian Science Practitioners are expressly exempted from regulation under the Michigan Medical Practices Act and according to the holding of the Van Marter court, the fact that the treatment in the instant case is not conventional has no bearing on plaintiff's right to recovery. Our most recent statement of the law on this subject dictates that "allowable expenses" are not limited to medical expenses or services administered by trained medical personnel.

As to the question of just what types of rehabilitative services fall within the category of those other than medical services administered by those other than trained medical personnel, a test has recently evolved in Michigan courts. This test was adopted by The Michigan Court of Appeals in the recent decision of Manley v. DAIIE, 127 Mich App 444, 454 (1983). The test for whether services rendered constitute "allowable expenses" under

MCLA 500.3107(a) is whether the services are as necessary for an uninjured person as they are for an injured person. If they are as necessary for an uninjured person, they do not constitute "allowable expenses" within the meaning of the statute.

In Manley, the parents of a young boy chose to take care of their son at home after continued dissatisfaction with the professional services they first employed. These parents hired "unskilled" nurses for the boy's at-home care. The appellate court found these services to be "allowable expenses" under MCLA 500.3107 (a), using the above-stated test.

On appeal, The Michigan Supreme Court affirmed the holding of the appellate court. In so doing, the Supreme Court specifically sanctioned this test that asks whether the service was as necessary for an uninjured person as it would be for an injured person. Manley v. DAIIE, 425 Mich 140 (1986). Further, The Michigan Supreme Court, in Manley, stated that a trial court can properly make the determination as to whether a rehabilitative service will be declared an "allowable expense". Manley, 425 Mich at 149.

This test allows for an expansive reading of the term "allowable expenses" under MCLA 500.3107(a) of the Michigan No-Fault Act. In applying this test to the case at bar, this court finds that plaintiff Mrs. Stephenson would not have engaged the services of this Christian Science Healer if her husband, plaintiff Mr. Stephenson, had not been rendered in a comatose state as a result of the automobile accident. This service was plainly not as necessary for an uninjured person as it was for an injured person. This court finds today, as a matter of law, that the services of the Christian Science Practitioner fall within the term "allowable expenses" within the meaning of MCLA 500.3107(a). This expansive reading of the relevant term is consistent with both general statutory construction as well as construction of insurance policies, which are to be liberally construed as favorable to the insured, plaintiffs Mr. and Mrs. Stephenson in this case.

Finally, although it is not binding, this court finds persuasive the recent Attorney General Opinion, No. 6129, delivered by Attorney General Frank J. Kelley in 1983. In discussing the very same issues as are before this court today, Attorney General Kelley said that the statuatory term "rehabilitation" under MCLA 500.3107 (a) "must be interpreted in a broad sense to embrace comprehensive care and services reasonably necessary to restore the injured person . . ." The Attorney General then went on to say that, "For many accident victims . . . that effort must go beyond mere medical treatment to include other forms of counseling . . ." Attny. Gen. Op. No. 6129, pp. 6-7. This broad reading of what type of treatment is compensable for rehabilitation is consistent with this court's opinion that the services rendered by the Christian Science Practitioner are "allowable expenses" for the rehabilitation of plaintiff Mr. Stephenson under MCLA 500.3107(a) of the Michigan No-Fault Act. Accordingly, defendant's motion for summary disposition as to the issue of "allowable expenses" is hereby denied.

As a final matter on this first issue, this court's attention is focused on defendant's supplemental brief where defendant asserts that any standard no-fault insurance policy does not cover such treatment as that in the instant case. This statement is not entirely accurate. Those medical expenses which are covered by no-fault insurance are variously described in the different state statutes. Some of these statutes expressly allow recovery for treatment connected with the practice of recognized religious healing methods, of which Christian Science healing is undisputedly one.

A first example of this is Arkansas' No-Fault insurance analogue to MCLA 500.3107(a) which provides for "All reasonable and necessary expenses for . . . any non-medical remedial care and treatment rendered in accordance with a recognized religious method of healing." Ark.Stat.Ann., Sec. 66-4014(a). Similar coverage under Colorado's amended No-Fault insurance statute is expressly

allowed. This state's analogue to MCLA 500.3107(a) allows compensation for " . . . non-medical remedial care and treatment rendered in accordance with a recognized religious method of healing . . ." Sec. 10-4-706(b), 4 C.R.S.(1973). This state's statute also includes a standard of necessity and reasonableness and this determination is strictly within the province of the jury. Blankenship v. Iowa Nat'l. Mut. Ins. Co., 41 Colo App. 430 (1978). Finally, Florida's parallel to MCLA 500.3107(a) allows recovery for "remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs." F.S.Sec. 627.736(1)(a), F.S.A. Again, this Florida No-Fault statute also tracks Michigan's No-Fault statute by incorporating a standard of necessity and reasonableness.

While these three states' No-Fault statutes include recovery for non-medical remedial treatment performed in accordance with recognized religious methods of healing, one state's No-Fault statute includes Christian Science care and treatment specifically. Maryland's No-Fault statute includes a section that speaks directly to Christian Science care stating "Nothing in this subtitle shall be construed to prohibit an insurer from providing Christian Science care and treatment, and such Christian Science care and treatment shall constitute economic loss." Md. Anno. Code, art. 48A Sec. 541(b).

Although Michigan's legislature has not gone so far as to specifically enumerate Christian Science treatment as an allowable expense under MCLA 500.3107(a), this court notes that no types of treatment are specifically enumerated within this statute. It is the view of this court that the legislature did not include an exhaustive list of compensable treatment for a reason. This reason is simply that, consistent with the foregoing analysis, the Michigan No-Fault insurance statute is to be broadly construed, in favor of the policyholder.

For this reason, it is this court's opinion that the Michigan No-Fault statute, MCLA 500.3107(a) aligns neatly with the analogous statutes of Arkansas, Colorado and Florida, in spirit if not in precise wording.

First, all statutes employ a standard of reasonableness and necessity, which are properly determined by the jury. The Michigan statute employs this same standard. Secondly, it is undisputed that, under Michigan law, the Christian Science faith is a recognized non-medical method of healing through prayer. MCLA 338.1816. Finally, and most importantly, both case law and Michigan's Standard Jury Instructions suggest that "allowable expenses" include, but are not limited to, medical expenses. In other words, that treatment which is other than medical treatment under Michigan law can only be what is provided for in the parallel statutes of Arkansas, Colorado and Maryland: non-medical remedial treatment rendered in accordance with a recognized religious method of healing. For all of these reasons, this court finds as a matter of law that, consistent with the legislative intent, this Christian Science treatment is within the "allowable expenses" of MCLA 500.3107(a).

II. REASONABLE CHARGES and REASONABLY NECESSARY SERVICES CONCLUSIONS OF LAW

Having determined that services rendered to plaintiff Mr. Stephenson by a Christian Science Practitioner are "allowable expenses" within the meaning of MCLA 500.3107(a), this court must now focus on the second issue of whether these were "reasonable charges" for "reasonably necessary" services within this same statute. The burden of showing reasonableness and necessity is clearly on the plaintiff. Nelson v. DAIIE, 137 Mich App 226, 231 (1984). Included in the plaintiff's showing is proof that such expenses were actually incurred. The Michigan Supreme Court, in Manley v. DAIIE, 425 Mich 140, 157 (1986), stated that a no-fault

insurer is required to pay only those necessary and allowable expenses actually incurred.

Also in Manley, The Supreme Court said that the value of the nursing services claimed by plaintiff were payable, upon submission to defendant of bills to substantiate the charges from established nursing companies. Manley v. DAIIE, 425 Mich 140, 149 (1986). (emphasis added) It is this court's opinion that plaintiffs, if they hope to recover for the services of the Christian Science Practitioner, must substantiate the $1,775.00 worth of services to defendant State Farm in much the same way that they have substantiated the costs incurred due to the conventional medical treatment.

Plaintiffs, Mr. and Mrs. Stephenson, submit that "certainly no one can argue that the aforementioned treatment was unnecessary when plaintiff, Ira Stephenson, lay comatose in the hospital". Plaintiff's Brief. This court agrees with defendant that this is but a mere conclusory statement that does not aid in the substantiation of plaintiffs' costs as being reasonable and necessary. In a directly analogous situation, The Michigan Court of Appeals held that "The conclusional statement that plaintiff is entitled to $5,000 for nurse's aide and replacement services, without more, is insufficient". Sharp v. Preferred Risk Ins., 142 Mich App 499, 515 (1985). Plaintiffs therefore must come forward with evidence to substantiate that $1,775.00 of expenses were reasonably necessary and actually incurred. Further, defendant's liability is limited only to those charges which are reasonable and it is also plaintiff's burden to show such reasonableness.

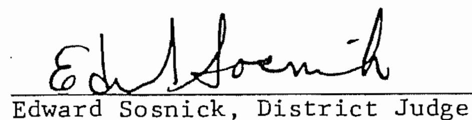
This court cannot, however, decide this issue of whether "reasonable charges" for "reasonably necessary" services were incurred under MCLA 500.3107(a) of the Michigan No-Fault Act as a matter of law. In a case directly on point, The Michigan Court of Appeals held that such a determination is a question of fact within the province of the jury. Nelson v. DAIIE, 137 Mich App 226, 231 (1984). See also Sharp v. Preferred Risk Ins., 142 Mich App 499 (1985).

Accordingly, because the determination of reasonableness and necessity is a fact question, and not a question of law, this court hereby denies defendant's motion for summary judgment as to this second issue.

As a final matter in the case at bar, this court reiterates that this is a case of first impression. In another case interpreting this same statute, The Michigan Court of Appeals held that defendant insurance company's refusal to pay was not unreasonable because it was based on a legitimate question of factual and legal uncertainty. Nelson v. DAIIE, 137 Mich App 266 (1984). This court today finds that similar circumstances exist in the present case. Never before in Michigan has recovery for services rendered by a Christian Science Practitioner been sought under this section of the Michigan No-Fault Act. Because of the unique nature of plaintiff's claim in this action, this court holds that there was no wrongful refusal of payment by defendant State Farm.

CONCLUSION

Looking at all evidence in a light most favorable to plaintiffs, and drawing all reasonable inferences therefrom, this court finds as a matter of law that services rendered for the rehabilitation of plaintiff Mr. Stephenson by a Christian Science Practitioner are "allowable expenses" within MCLA 500.3107(a) of the Michigan No-Fault Act. This court further finds that the question of reasonableness and necessity is one for determination by the jury. For reasons set forth in the foregoing analysis, defendant's motion for summary disposition is hereby denied. The court will sign an order accordingly.



Edward Sosnick, District Judge

DATED: August 7, 1986