

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET WOGAMAN,

Plaintiff-Appellee,

v

MICHIGAN EDUCATION SPECIAL SERVICES
ASSOCIATION,

Intervening Plaintiff-Appellant,

and

CARMAN-AINSWORTH SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

December 10, 1996

No. 185396

LC No. 91-982

Before: Saad, P.J., and Corrigan and R. A. Benson,* JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Intervening plaintiff Michigan Education Special Services Association (MESSA) appeals a decision by the Worker's Compensation Appellate Commission (WCAC) affirming in part and reversing in part the decision of the magistrate and awarding benefits to plaintiff Margaret Wogaman. We affirm.

Plaintiff's application for worker's compensation benefits alleged disability due to injury to her back and neck resulting from her work as a bus driver for defendant Carman-Ainsworth Schools. MESSA filed a notice of lien and motion to intervene. MESSA sought reimbursement of long-term disability and medical benefits paid to plaintiff with funds it collected in premiums.

At trial, MESSA employees testified that MESSA is not an insurance company, but rather is a servicing agent. It collects premiums for companies with which it works, and then administers the payment of benefits. MESSA acted as agent for the Equitable for long-term disability benefits and for

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

Blue Cross for medical benefits. Plaintiff executed an assignment of long-term disability benefits to the Equitable and an assignment of medical benefits to Blue Cross and MESSA. MESSA had arranged with the companies to recover benefits paid in any case in which the insured received an award of worker's compensation benefits.

The magistrate granted plaintiff an open award of benefits, and granted MESSA's motion to intervene. While acknowledging that MESSA was a service organization rather than an insurance company, the magistrate noted that MESSA's representatives testified that all of the long-term disability benefits and a portion of the medical benefits were paid with MESSA's money. Plaintiff's execution of assignments gave MESSA the right to intervene. The magistrate relied on authority such as *Ptak v Pennwalt Corp*, 112 Mich App 490; 316 NW2d 251 (1982), in which this Court stated that Blue Cross, which had filed a lien, was a third-party insurance company and would have a right to intervene. In addition, the magistrate observed that in *Russell v Welcor, Inc*, 157 Mich App 351; 403 NW2d 133 (1987), this Court stated that in *Hanson v Howmet Corp*, 1984 WCABO 645, the Worker's Compensation Appeal Board (WCAB) required a direct interest, either pecuniary or administrative, for an entity to be included as an interested party. *Russell, supra*, dealt with the issue of whether the defendant's no-fault carrier could actively participate in the proceedings. Finding that plaintiff's attorney could not serve both plaintiff and MESSA, the magistrate concluded that the best solution would be to allow MESSA to intervene.

The WCAC affirmed the magistrate's award of benefits to plaintiff, but reversed the holding that MESSA was entitled to intervene. The WCAC found that the magistrate's reliance on *Hanson, supra*, was misplaced. Noting that in *Ptak, supra*, a direct financial interest in a proceeding was impliedly recognized as a basis for gaining status as a party in interest, the WCAC found that the evidence did not support the finding that MESSA used its own funds to pay benefits. The evidence showed that MESSA collected premiums and then distributed those funds to companies or insureds. Finally, the WCAC reversed the finding that defendant was required to reimburse MESSA for long-term disability benefits paid to plaintiff.

Findings of fact made by a magistrate are conclusive on the WCAC if they are supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3); MSA 17.237(861a)(3). Judicial review is of the findings of fact made by the WCAC, not those made by the magistrate. The findings of fact made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

On appeal, MESSA argues that the WCAC erred by holding that it was not entitled to intervene. In *Aetna Life Ins Co v Roose*, 413 Mich 85; 318 NW2d 468 (1982), our Supreme Court held that a reimbursement agreement between a worker's compensation claimant and an insurance company is the legal equivalent of an assignment. Such an assignment is valid under MCL 418.821(2); MSA 17.237(821)(2). MESSA contends that because it is an entity covered by §821(2) and has a valid assignment in the form of the reimbursement agreement signed by plaintiff, it is a party in interest. In addition, MESSA contends that it is a party in interest because it has a right to reimbursement under

MCL 418.315(1); MSA 17.237(315)(1). That section provides that if an employer fails to pay reasonable medical expenses, the employee may be reimbursed for same, or payment may be made on behalf of the employee to the person or persons to whom the unpaid expenses are owing.

MESSA continues to rely on authority such as *Ptak, supra*, and *Russell, supra*. In *Ptak, supra*, it was undisputed that Blue Cross paid benefits to the claimant, and thus had a direct financial interest in the litigation. This Court found that Blue Cross was entitled to reimbursement, and thus was a party in interest. In *Russell, supra*, this Court noted that Royal, the employer's no-fault carrier, had a direct financial interest in the outcome of the worker's compensation proceeding because it had paid benefits to the decedent's personal representative. Reasoning that because the term "party in interest" was broad enough to encompass an entity such as Royal having a direct financial interest in any award of worker's compensation benefits, this Court held that Royal should be allowed to participate as a party. MESSA asserts that these cases do not condition intervention or reimbursement on a party's status as an insurance company or direct medical provider. Relying on *Hanson, supra*, MESSA concludes that a party in interest need not have a strictly pecuniary interest in a matter in order to be entitled to intervene.

We disagree. The undisputed evidence showed that MESSA was a servicing agent and not an insurance company. It collected premiums and paid benefits for which insureds had contracted. No evidence showed that MESSA performed this service at any actual cost to itself. While MESSA's representatives testified that the benefits were paid from MESSA's funds, they acknowledged that the money had been collected from insureds. *Ptak, supra*, impliedly recognized a direct financial interest as a basis for gaining status as a party in interest. *Russell, supra*, clearly relied on the fact that Royal had a direct financial interest in the proceedings. While *Hanson, supra*, does not indicate that party status based on an administrative interest alone is limited to the Worker's Compensation Bureau, that case is not binding on this Court and we decline to follow its reasoning.

Furthermore, MESSA's contention that intervention is warranted under §821(2) and §315(1) is without merit. Section 821(2) provides that an assignment of worker's compensation benefits made to an insurance company, a health maintenance organization, a medical care and hospital service organization, or any successor organization, is valid. Contrary to its assertion, MESSA is not an entity covered by §821(2). *Aetna, supra*, does not support MESSA's claim that it is entitled to intervene in this case. Section 315(1) is inapplicable because MESSA has not shown that it is seeking reimbursement for unpaid expenses.

Next, MESSA contends that even assuming arguendo that it was not entitled to intervene, the WCAC erred by holding that it was not entitled to reimbursement. Plaintiff received long-term disability benefits pursuant to a policy underwritten by defendant. That policy required reimbursement in the event that plaintiff received an award of worker's compensation benefits. Having found that defendant was entitled to coordinate benefits, the WCAC violated MCL 418.354(1)(b); MSA 17.237(354)(1)(b) by holding that defendant was not required to make reimbursement. That section provides that if a

disability insurance policy requires repayment in the event that worker's compensation benefits are awarded, the carrier shall satisfy repayment out of the funds received through coordination.

This issue is without merit. Based on its finding that MESSA was not entitled to intervene, the WCAC reversed the magistrate's decision that defendant was required to reimburse MESSA for payment of long-term disability benefits. MESSA's reliance on §354(1)(b) is misplaced. That section requires reimbursement for an insurance company that has in fact expended funds. MESSA does not qualify for reimbursement because it did not expend its own funds.

Finally, we decline to address MESSA's argument that it was entitled to reimbursement for payments made to certain physicians. The WCAC did not review the issue because MESSA was not a party and the issue was not properly before it. MCL 418.861a(11); MSA 17.237(861a)(11). Because the issue was not decided by the WCAC, it is not properly before this Court. MCL 418.861a(14); MSA 17.237(861a)(14).

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson