

STATE OF MICHIGAN
COURT OF APPEALS

CHARLOTTE J. WELLS,

Plaintiff-Appellant,

v

BAY-AREANAC COMMUNITY LIVING,
ACCIDENT FUND OF MICHIGAN, and SECOND
INJURY FUND (Two Years of Continuous Disability
Provision & Dual Employment Provision),

Defendants-Appellees.

UNPUBLISHED
February 21, 1997

No. 184464
WCAC
LC No. 930210

Before: White, P.J., and Griffin and D.C. Kolenda,* JJ.

MEMORANDUM.

This matter is before the Court on remand from the Supreme Court for consideration as on leave granted. Plaintiff appeals a March 11, 1994 decision of the Worker's Compensation Appellate Commission that concluded plaintiff was not disabled because she had the ability to earn as much in wages with her alleged work-related mental disability as she had before she incurred that disability. We remand.

The magistrate found plaintiff only partially disabled because the magistrate concluded there was work plaintiff could perform other than work in the "foster care business," which was the type of work plaintiff was employed in when she was assaulted and injured. The magistrate awarded continuing benefits at the rate of \$100 per week.

The WCAC found that the magistrate's decision that plaintiff was only partially disabled was adequately supported by the record, but went on to find that plaintiff was not "disabled" because plaintiff's continuing or residual wage-earning capacity was equal to or greater than the average weekly wage she was earning from defendant when she was injured.

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

We remand for reconsideration in light of *Sabotka v Chrysler Corp*, 447 Mich 1; 523 NW2d 454 (1994), and further direct that the WCAC apply the 1982 definition of “disability.” The WCAC shall address any other issues as necessary on remand, including, if necessary, the application of §356, and may remand to a magistrate if appropriate. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda