STATE OF MICHIGAN

COURT OF APPEALS

MARY KATHLEEN McEVILLY

Plaintiff/Counter-Defendant/Appellant,

v

LAKE STATES INSURANCE COMPANY,

Defendant/Counter-Plaintiff/Appellee.

UNPUBLISHED
April 11, 1997

No. 185595
LC No. 94-477024 NF

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

PER CURIAM.

In this declaratory judgment action, plaintiff appeals by right. We affirm the trial court's order granting summary disposition to defendant.

I

Plaintiff first contends that the transportation cost she incurred in traveling to and from her place of employment was compensable as an allowable expense under MCL 500.3107(1)(a); MSA 24.13107(1)(a). Pursuant to Michigan's no-fault act, personal protection insurance benefits are payable for:

> Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. [MCL 500.3107(1)(a); MSA 24.13107(1)(a).]

Thus, in order to be an "allowable expense," "the expense must have been for a product, service, or accommodation reasonably necessary for the injured person's care, recovery, or rehabilitation." *Moghis v Citizens Ins Co,* 187 Mich App 245, 247; 466 NW2d 290 (1991). Plaintiff argues that her employment was "rehabilitation," and as a result, the transportation costs she incurred in getting to and from her place of employment were compensable. We disagree. While vocational rehabilitation is an

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

"allowable expense" under MCL 500.3107(1)(a); MSA 24.13107(1)(a), *see Kondratek v Auto Club Ins Assoc*, 163 Mich App 634, 636-637; 414 NW2d 917 (1987), we find that plaintiff's employment does not constitute rehabilitation under the no-fault act.

The term "rehabilitation" is not defined by Michigan's no-fault act. *See* MCL 500.3101 *et seq*. ; MSA 24.13101 *et seq*. If a statute does not provide a definition for a term, the term is to be construed according to its plain and ordinary meaning. *Markillie v Livingston Co Bd of Rd Commissioners*, 210 Mich App 16, 21; 532 NW2d 878 (1995); *Nelson v Grays*, 209 Mich App 661, 664; 531 NW2d 826 (1995). In so doing, it is appropriate to look to the term's dictionary definition. *Markillie*, 210 Mich App at 21; *Nelson*, 209 Mich App at 664.

Rehabilitate is defined as:

> 4. a) to bring or restore to a normal or optimum state of health, constructive activity, etc. by medical treatment and physical or psychological therapy b) *to prepare (the handicapped or disadvantaged) for useful employment by vocational counseling, training, etc.* [Webster's New World Dictionary of the American Language, Second Collegiate Edition (1980). (Emphasis added.)]

Accordingly, in the context of this case, "rehabilitation" means counseling or training used to prepare an individual for useful employment. This definition is consistent with decisions by Michigan courts which have allowed expenses for vocational rehabilitation pursuant to MCL 500.3107(1)(a); MSA 24.13107(1)(a) because training was required before the injured individual would be able to obtain gainful employment. *See Kondratek*, 163 Mich App at 634.

These facts do not support plaintiff's claim that her employment was vocational rehabilitation. Plaintiff was employed by the YMCA in a part-time position for which she was paid. Given the aforementioned definition of the term "rehabilitate," gainful employment is the *goal* of rehabilitation, and is therefore not rehabilitation in and of itself. Accordingly, plaintiff's employment was not vocational rehabilitation for which she was entitled to be compensated. Clearly, the trial court did not err in granting defendant's motion for summary disposition. In light of this finding, we need not address whether transportation expenses incurred in traveling to and from vocational rehabilitation is compensable under the no-fault act.

II

Plaintiff also contends that she was entitled to penalty attorney fees pursuant MCL 500.3148; MSA 24.13148. We disagree. Under Michigan law, such penalty attorney fees are mandatory only when there has been culpable conduct by the insurer, namely the unreasonable refusal or delay in payment. *Combs v Commercial Carriers*, 117 Mich App 67, 73; 323 NW2d 596 (1982). However, "[a] refusal or delay in payment by an insurer will not be found unreasonable under this statute where it is the product of a legitimate question of statutory construction, constitutional law, or a bona

fide factual uncertainty." *McKelvie v Auto Club Insurance Assoc*, 203 Mich App 331, 335; 512 NW2d 74 (1994).

Under the facts and circumstances of this case, defendant's refusal to pay was not unreasonable. Defendant's refusal to pay plaintiff's claim for personal injury benefits was based upon its assertion that plaintiff's transportation expenses to and from her place of employment were not "within the scope of reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation." At the time defendant refused to pay plaintiff's claim, no case law specifically addressed whether an insured's claim for transportation expenses incurred in obtaining vocational rehabilitation was an allowable expense or whether employment was vocational rehabilitation under the no-fault act. Thus, defendant's refusal to pay was based upon a legitimate question of statutory construction. Accordingly, the trial court did not err in concluding that defendant's actions were not unreasonable and in declining to award plaintiff penalty attorney fees.

Affirmed.

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