

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN OPTOMETRIC ASSOCIATION,

Plaintiff-Appellee,

v

COMMISSIONER OF THE OFFICE OF
FINANCIAL AND INSURANCE SERVICES,

Defendant-Appellant.

UNPUBLISHED

October 7, 2003

No. 234599

Ingham Circuit Court

LC No. 99-090816-CK

MICHIGAN OPTOMETRIC ASSOCIATION,

Plaintiff-Appellant,

v

COMMISSIONER OF THE OFFICE OF
FINANCIAL AND INSURANCE SERVICES,

Defendant-Appellee.

No. 235088

Ingham Circuit Court

LC No. 99-090816-CK

Before: Whitbeck, C.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant Commissioner of the Office of Financial and Insurance Services appeals as of right an order granting partial summary disposition for plaintiff Michigan Optometric Association on its claim that Blue Cross Blue Shield of Michigan violated the Nonprofit Health Care Corporation Reform Act¹ by refusing to reimburse optometrists for certain procedures alleged to be within the scope of optometry, and violated the Prudent Purchaser Act² by refusing to include optometrists on its medical prudent purchaser panel, which prevented optometrists

¹ 1980 PA 350, MCL 550.1101 *et seq.*

² 1984 PA 233, MCL 550.51 *et seq.*

from performing and being reimbursed for the contested procedures for BCBSM subscribers. In a consolidated case, the MOA appeals an order granting the commissioner's motion for summary disposition respecting the portion of the MOA's complaint that challenged the constitutionality of 1994 PA 384 and tie-barred acts 1994 PA 436, 437, and 438 on equal protection grounds. These acts expanded the scope of optometry while limiting BCBSM's duty to reimburse optometrists for any procedures added to the scope of optometry after May 20, 1992. Since this appeal was filed, BCBSM has acknowledged that the contested procedures are within the scope of optometry and has agreed to reimburse optometrists for those procedures. Because there is no longer an actual controversy, we dismiss the appeals as moot.

According to the MOA's supplemental record statement, on September 5, 2002, BCBSM filed a new provider contract with the commissioner. Under the new contract, which was implemented on December 1, 2002, BCBSM agreed to reimburse qualified optometrists for each of the fifteen procedures enumerated in the MOA's complaint,³ as well as several others for which optometrists were not previously reimbursed. The MOA's supplemental record statement acknowledges that, under the new contract, "primarily all of the services which are the subject of this controversy are payable for optometry."

"A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights."⁴ In this case, as a result of the new contract, optometrists currently have the right to be reimbursed from BCBSM for the procedures that are the subject of this litigation, and BCBSM has acknowledged that the procedures are within the scope of optometry. Thus, the contractual right to reimbursement, and the corresponding duty of BCBSM to reimburse, would exist regardless of our determination whether optometrists have a statutory right to reimbursement for these procedures. Accordingly, there is no longer an existing fact or right at issue. We will not reach moot issues or declare legal principles that have no practical effect on the case before us "unless the issue is one of public significance that is likely to recur, yet evade judicial review."⁵ Should the questions underlying these appeals recur, judicial review will be available at that time. Therefore, we conclude that review of the issues presented in these appeals is not warranted. We note that in reaching this conclusion, we express no opinion regarding the merits of the trial court's decisions.

The MOA nonetheless requests that this Court issue a declaratory judgment that the contested services are within the scope of optometry. However, under MCR 2.605, this Court

³ According to the complaint, the procedures for which the MOA sought reimbursement were designated by the CPT codes 65222, 66205, 68761, 92020, 92081-92083, 99201-99205, and 99211-99215. Of these services, only 66205 does not appear in the new contract as a reimbursable procedure. Our review of the pleadings indicates that 66205 likely should have read 65205, which is the CPT code for foreign object removal. This procedure, which was not previously reimbursable for optometrists, is reimbursable under the new contract.

⁴ *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

⁵ *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002).

can grant declaratory relief only if there is an actual controversy.⁶ Because of the actual controversy requirement, this Court may not “decide moot questions in the guise of giving declaratory relief.”⁷ As noted, BCBSM now acknowledges that the contested procedures are within the scope of optometry, and reimburses optometrists accordingly. Accordingly, because there is no longer an actual controversy in this case, we decline to address the issues presented on appeal on the merits.

Dismissed.

/s/ William C. Whitbeck
/s/ Janet T. Neff
/s/ Pat M. Donofrio

⁶ MCR 2.605; *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978).

⁷ *Dep’t of Social Services v Emmanuel Baptist Preschool*, 434 Mich 380, 470; 455 NW2d 1 (1990), citing *McMullen v Secretary of State*, 339 Mich 175; 63 NW2d 599 (1954).