STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

NORTHWEST CHIROPRACTIC LIFE CENTER, P.C.,

Plaintiff,

Case No: 16-002279-NF

Hon. Richard N. LaFlamme

v.

AUTO-OWNERS INSURANCE GROUP, a Michigan corporation, **d/b/a AUTO-OWNERS INSURANCE COMPANY**,

Defendant.

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

Plaintiff, Northwest Chiropractic Life Center, P.C. ("Northwest Chiropractic"), a medical provider, claims that it is entitled to reimbursement for personal protection insurance ("PIP") benefits under the Michigan No-Fault Act, MCL 500.3101 *et seq.*, for chiropractic services rendered to the insured, Barbara Ann Vanepps, to treat injuries resulting from a motor vehicle accident on May 9, 2015.

Specifically, Northwest Chiropractic seek reimbursement for providing electrical muscle stimulation and cold/hot packs services to the insured and alleges that such services were reasonably necessary for the insured's "care, recovery, or rehabilitation" under MCL 500. 3107 and were included within the definition of chiropractic practice under the previous and current versions of MCL 333.16401 of the Public Health Code. Defendant argues that the Michigan No-Fault Act, specifically MCL 500.3107b(b), does not require an insurance carrier to reimburse a medical provider for the abovementioned chiropractic services because such services were not

included in the definition of chiropractic services under MCL 333.16401 of the Public Health Code, as of January 1, 2009.

I. Legal Standard

MRC 2.116(C)(8)

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). *Maiden v Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817, 823 (1999). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Maiden*, 461 Mich 109, 119, citing *Wade v. Dep't of Corrections*, 439 Mich. 158, 162, 483 N.W.2d 26 (1992). However, mere conclusions, without more, do not constitute a cause of action. *Eason v Coggins Mem Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882, 884 (1995), citing *Roberts v Pinkins*, 171 Mich App 648, 651, 430 NW2d 808 (1988). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Duran v Detroit News, Inc.*, 200 Mich App 622, 628, 504 NW2d 715 (1993).

MCR 2.116(C)(10)

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Dressel v. Ameribank*, 468 Mich. 557, 561, 664 NW2d 151 (2003). Where the proffered evidence establishes that no genuine issue of material fact exists between parties, excluding damages, the moving party is entitled to judgement as a matter of law. *Miller v. Purcell*, 246 Mich. App. 244, 246, 631 NW2d 760 (2001). The moving party has the burden of supporting its position through affidavits, depositions, admissions, or other documentary evidence. *Neubacher v. Globe Furniture Rentals*, 205 Mich. App. 418, 420, 522 NW2d 335

(1994). The burden then shifts to the nonmoving party to establish through documentary evidence that a genuine issue of material fact exists. *Id.*

In evaluating a motion brought under MCR 2.116(C)(10), the court considers the record in the light most favorable to the nonmoving party. *Ritchie-Gamester v. City of Berkley*, 461 Mich. 73, 76, 597 NW2d 517 (1999). A genuine issue of material fact exists where the record, viewed in the light most favorable to the nonmoving party, leaves open an issue upon which reasonable minds may differ. *West v. GMC*, 469 Mich.177, 183, 665 NW2d 468 (2003).

II. Analysis

Generally, the Michigan No-Fault Act requires no-fault insurance carriers to pay PIP benefits 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). Further, only treatment lawfully rendered is subject to payment as a no-fault benefit. *Cherry v. State Farm Mutual Automobile Ins. Co.*, 195 Mich.App. 316, 320, 489 N.W.2d 788 (1992).

However, the Legislature enacted 2009 PA 222 (contained within MCL 500.3107b(b)), which provided certain exceptions from an insurer's duty to pay for services under the Michigan No-Fault Act. See MCL 500.3107b. In relevant part, MCL 500.3107b(b) provides the following exception with regard to reimbursement or coverage for chiropractic services:

> Reimbursement or coverage under §3107 is not required for...practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under §16401 of the Public Health Code, 1978 PA 368, MCL 333.16401 (as of Jan 1, 2009).

As of January 1, 2009, the chiropractic statute, MCL 333.16401, provided the following definition of chiropractic practice:

> "Practice of chiropractic" means that discipline within the healing arts which deals with the nervous system and its relationship to the spinal column and its interrelationship with other body systems. Practice of chiropractic includes:
>
> (i) Diagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care.
>
> (ii) The adjustment of spinal subluxations or misalignments and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.
>
> (iii) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine.

The question whether a given activity is within the authorized scope of chiropractic practice is primarily one of statutory construction to be determined by the court. *Attorney General v. Beno*, 422 Mich. 293, 303-304, 373 N.W.2d 544 (1985).

In *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 67; 535 NW2d 529, 537 (1995), the Court of Appeals previously determined that a chiropractor's administration of heat and cold, including hot/cold packs, was not within the definition of chiropractic practice under MCL 333.16401 as of January 1, 2009. Therefore, an insurer is not required to reimburse for hot/cold pack services rendered by a chiropractor under the Michigan No-Fault Act. *Id.*; MCL 500.3107b(b).

Furthermore, the Court of Appeals in *Measel v Auto Club Group Ins Co*, 314 Mich App 320; 886 NW2d 193 (2016), recently held that although massage and ultrasound therapy services fall within PIP coverage under MCL 500.3107 because they were lawfully rendered and reasonably necessary for an insured's care, and such services now constitute "a practice of chiropractic service", the services did not fall within the definition of "practice of chiropractic" under MCL

333.16401 as the statute existed on January 1, 2009, and therefore, reimbursement for the services was not required under Michigan's No-Fault Act. *See* MCL 500.3107b(b). In *Measel*, the Court of Appeals gave great weight to the intent of the Legislature in enacting these statutes:

> Along with 2009 PA 222 [contained within MCL 500.3107b], the Legislature also enacted 2009 PA 223, which expanded the scope of the definition of "practice of chiropractic" under MCL 333.16401. Thus, while 2009 PA 223 expanded the scope of the definition of "practice of chiropractic," 2009 PA 222 limited insurance providers' liability under the No-Fault Act for the newly included services.
>
> Considering the plain language of MCL 500.3107b(b), if a service is " within [PIP] coverage under [MCL 500.3107]," the service is generally reimbursable under the no-fault act unless an exception in MCL 500.3107b applies. Under MCL 500.3107b(b), reimbursement for a service otherwise covered by MCL 500.3107 "is not required" if the service is (1) "[a] practice of chiropractic service," (2) "unless that service was included in the definition of practice of chiropractic under [MCL 333.16401], ... as of January 1, 2009." Accordingly, if a service falls within PIP coverage under MCL 500.3107, and is "[a] practice of chiropractic service" under MCL 500.3107b(b), reimbursement is only required under the no-fault act if the service was included in the definition of "practice of chiropractic" under MCL 333.16401 as that statute existed on January 1, 2009.

Measel, 314 Mich App at 328; 886 NW2d at 197–98. Thus, the inclusion of a chiropractic service in the current version of MCL 333.16401 makes the service "a practice of chiropractic service" under MCL 500.3107b(b), but does not require an insurer to reimburse the medical provider for such service unless that service was within the definition of chiropractic practice contained in the January 1, 2009 version of MCL 333.16401. *Id.*

Although an argument may be made that electrical muscle stimulation is included within the definition of a "practice of chiropractic" under the current version of MCL 333.16401, electrical muscle stimulation does not constitute any of the covered services under MCL 333.16401 as of January 1, 2009, because it is not: a diagnostic practice; an adjustment; nor, an analytical instrument, a rehabilitative exercise, an adjustment apparatus, or an x-ray machine. *Measel*, 314 Mich App at 335; 886 NW2d at 201 ("Although each of the services at issue in this

case was '[a] practice of chiropractic service' under MCL 333.16401, reimbursement is not required unless the service 'was included in the definition of practice of chiropractic under [MCL 333.16401] ... as of January 1, 2009.' MCL 500.3107b(b)."). Therefore, based upon the Court of Appeals's holding in *Measel*, and the definition of chiropractic practice in MCL 333.16401 as of January 1, 2009, the Court finds that the administration of electrical muscle stimulation was not within the scope of the "practice of chiropractic" as of January 1, 2009. Thus, the insurer is not liable for reimbursement or coverage of electrical muscle stimulation services under MCL 500.3107b(b).

In this case, because the language of the Michigan No-Fault Act operates specifically to exclude certain treatments that might fall under post-January 1, 2009, versions of the chiropractic statute (MCL 333.16401), the Court must find, no matter how unfortunate or illogical it believes this result to be, that electrical muscle stimulation and hot/cold packs are not reimbursable as chiropractic expenses, pursuant to Section 500.3107b(b) of the Michigan No-Fault Act.

III. Conclusion

Therefore, Defendant is entitled to summary judgment as a matter of law. Thus, Defendant's Motion for Partial Summary Disposition is **GRANTED,** and Plaintiff's claims for reimbursement for electrical muscle stimulation and hot/cold packs are dismissed, with prejudice.

This is not a final order.

Dated: March 15, 2017

/s/ Richard N. LaFlamme
Richard N. LaFlamme, Circuit Court Judge

The undersigned certifies that copies of this Opinion and Order were sent via ordinary mail to counsel of record.

/s/ Jenna Furman

Jenna Furman, Judicial Attorney