STATE OF MICHIGAN

COURT OF APPEALS

PHYLLIS L. GRIFFITH, Legal Guardian for DOUGLAS W. GRIFFITH, a Legally Incapacitated Adult,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
August 16, 2002

No. 232517
Ingham Circuit Court
LC No. 97-087437-NF

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order ruling that room and board expenses for Douglas W. Griffith (hereinafter "Griffith"), a legally incapacitated adult, are an allowable expense under the no-fault act. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 28, 1994, Griffith sustained a severe brain injury in a motor vehicle accident. The accident left him totally disabled. He requires constant monitoring, care and assistance with every aspect of life. For fifteen months after the accident Griffith received in-patient treatment in hospitals and rehabilitation facilities. From August 1995 through August 1997 Griffith resided in a modified apartment and received continuous care. On August 6, 1997, Griffith returned to his home. Plaintiff, his wife, and other attendants provide the care that he requires.

At the time of the accident Griffith was covered under a no-fault automobile insurance policy issued by defendant. During the period that Griffith was hospitalized and while he resided in the apartment, defendant paid his expenses, including those incurred for food. After Griffith returned home a dispute arose regarding defendant's obligation to pay for various modifications to his home and for certain other expenses, including his food. Plaintiff filed suit seeking reimbursement of certain expenses, including those incurred for Griffith's food. The trial court ruled that the cost of Griffith's food was an allowable expense under MCL 500.3107(1)(a). That ruling is the only aspect of the trial court's decision challenged on appeal.

Defendant argues the trial court erred by holding that the cost of Griffith's food was an allowable expense under MCL 500.3107(1)(a), and asserts that a causal link must exist between

injuries sustained in a motor vehicle accident and an incurred expense. Defendant reasons that a person must consume food regardless of whether he is disabled and regardless of where he resides, and maintains that once Griffith returned home, his food expenses were no longer incurred as a result of his injuries. We affirm the trial court's decision.

Under the no-fault insurance act, an insurer must pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle. Payable benefits include allowable expenses. Allowable expenses consist of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. MCL 500.3105(1); MCL 500.3107(1)(a). To be entitled to reimbursement for an allowable expense under MCL 500.3107(1)(a), a plaintiff must prove that: (1) the expense was reasonable; (2) the expense was reasonably necessary; and (3) the expense was incurred. *Spect Imaging, Inc v Allstate Ins Co*, 246 Mich App 568, 574; 633 NW2d 461 (2001).

The issue raised in this appeal is controlled by *Reed v Citizens Ins Co*, 198 Mich App 443, 453; 499 NW2d 22 (1993). In *Reed*, this Court held that where a person injured in a motor vehicle accident is unable to care for himself or herself and would be institutionalized if a family member were unwilling to provide home care, a no-fault carrier liable for the cost of maintenance in an institution is liable for the cost of maintenance, including room and board, in the home. The *Reed* Court expressed agreement with Justice Boyle's statement in *Manley v DAIIE*, 425 Mich 140, 152-153; 388 NW2d 216 (1986), that if a person who would require institutionalized care can be cared for at home due to the devotion of family members, the test for allowable expenses should not differ from that set out in MCL 500.3107(1)(a). *Manley*, *supra*, 169 (Boyle, J., concurring in part and dissenting in part).[1]

Defendant's assertion that the no-fault act requires that an expense, to be allowable, must have been incurred only as a result of an injured insured being cared for in an institutionalized setting was rejected in *Reed*, *supra* at 453. Defendant does not dispute that if Griffith's wife were unwilling or unable to care for him at home, he would require institutionalized care. Under the rule announced in *Reed*, *supra*, the cost of Griffith's food is an allowable expense under MCL 500.3107(1)(a).

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[1] In *Manley v DAIIE*, 127 Mich App 444; 339 NW2d 205 (1983), a jury found the defendant insurer liable for payment of food expenses for the injured insured, who was cared for at home by family members. On appeal, this Court stated that food obtained at an institution is an allowable expense because an institutionalized person must obtain food from the institution, and the expense represented an extraordinary cost not analogous to an expense incurred at home. This Court reversed the award of room and board on the ground that it did not distinguish between food expenses and the other services provided by an institution. *Id*., 454. In *Manley v DAIIE*, 425 Mich 140, 152-153; 388 NW2d 216 (1986), our Supreme Court declared that portion of this Court's opinion to be without precedential effect on the ground that the issue whether food and other maintenance expenses are allowable expenses under MCL 500.3107(1)(a) was not presented in the trial court or argued in this Court.

Defendant's efforts to distinguish *Reed* are unavailing where the *Reed* Court held that if an injured insured would otherwise require institutionalized care were a family member not willing to provide home care, room and board in the home constitutes an allowable expense under MCL 500.3107(1)(a). *Reed*, *supra*.

Affirmed.

/s/ Helene N. White
/s/ Janet T. Neff
/s/ Kathleen Jansen