STATE OF MICHIGAN

COURT OF APPEALS

DAVID GABLE,

Plaintiff,

and

DR. KIM K. LIE,

Intervening Plaintiff-Appellant,

v

PRODUCTION STAMPING, INC., and CITIZENS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
August 21, 2001

No. 230004
WCAC
LC No. 96-000129

Before: K.F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

On September 27, 2000, our Supreme Court issued an order remanding this matter to us for "consideration as on leave granted" and further granting the Accident Fund Company's motion to appear as *amicus curiae*. Pursuant to our Supreme Court's directive and respecting the letter of the Court's order, we now consider this matter along with the arguments set forth in the *amicus* brief submitted by the Accident Fund Company for our review[1].

Intervening plaintiff Dr. Kim K. Lie appeals as on leave granted from the order of the Worker's Compensation Appellate Commission (hereinafter referred to as the "WCAC") that affirmed a magistrate's decision to deny reimbursement of Dr. Lie's facility charge for the use of his unlicensed office-based surgical suite. We affirm.

Appellate courts exercise a narrow scope of review over decisions of the WCAC, and, as a general rule, must defer to the WCAC's administrative expertise in this highly technical area of

[1] We also note that on remand, a minority of the Justices would also direct this Court to docket the other ten appeals without charging any additional filing fees.

law. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000); *Boardman v State, Dep't of State Police*, 243 Mich App 351, 356; 622 NW2d 97 (2001). Questions of law involved in any final order of the WCAC are reviewed de novo by the judiciary. See *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000).

We agree with the WCAC that neither the language of § 315 of the Worker's Disability Compensation Act, MCL 418.101 *et seq.*,[2] nor the Health Care Services Rules (hereinafter referred to as the "HCS Rules") then in effect provided for reimbursement of Dr. Lie's facility charge so long as the facility was unlicensed. Subsection 315(2) unambiguously provided that "all fees and other charges," including a provider's usual and customary charge, were subject to the rules promulgated by the Bureau, including the HCS Rules. The applicable rule then in effect, HCS Rule 418.105(i),[3] defined a "free standing surgical outpatient facility" as one that is licensed.[4] Moreover, the testimony of a member of the HCS Rules Advisory Committee indicated that an office-based surgical facility was simply not contemplated by the committee. The committee, which was only advisory in nature, informed Dr. Lie that he could use billing code 99070-22, but the use of such code would subject his charges to "utilization review" by worker's compensation insurers.[5] While such a resolution may lead to inconsistent results, Dr.

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[2] Subsection (2) of the statute provided:

> Except as otherwise provided in subsection (1), all fees and other charges for any treatment or attendance, service, devices, apparatus, or medicine under subsection (1), are subject to rules promulgated by the bureau of worker's compensation pursuant to Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The rules promulgated shall establish schedules of maximum charges for the treatment or attendance, service, devices, apparatus, or medicine, which schedule shall be annually revised. A health facility or health care provider shall be paid either its usual and customary charge for the treatment or attendance, service, devices, apparatus, or medicine, or the maximum charge established under the rules, whichever is less. [MCL 418.315(2); MSA 17.237(315)(2).]

[3] R 418.105(i) provided:

> "Free standing surgical outpatient facility" means a licensed facility that offers a surgical procedure and related care which, in the opinion of the treating practitioner, can be safely performed without requiring overnight inpatient hospital care, but does not include a surgical outpatient facility that is owned and operated as part of a hospital.

[4] The HCS Rules in effect at the time of the present claims, R 418.101 *et seq.*, have since been rescinded and replaced with a revised set of rules, R 418.10101 *et seq.*, effective May 11, 2000.

[5] "Utilization review" means:

(continued…)

Lie had the further option to privately contract with insurers for reimbursement of his facility charge, see R 418.101(4) (rescinded), and to seek a change in the rules.[6]

Here, both the magistrate and the WCAC recognized the limits of their authority in this matter, and properly declined to rewrite the rules so as to grant blanket authorization for reimbursement of Dr. Lie's use of his unlicensed surgical facility. Likewise, the judiciary does not have such authority.

We further conclude that the WCAC did not err by ruling that the magistrate's decision regarding Dr. Lie's use of billing code 99070-22 was legally correct and supported by competent, material, and substantial evidence. Judicial deference to the administrative expertise of the WCAC is particularly appropriate in the areas of provider reimbursement and utilization review of provider charges. See *Mudel*, *supra* at 702-703.

Dr. Lie alternatively argues that he is entitled to payment under the equitable doctrine of quantum meruit. Recovery in quantum meruit is based on the acceptance of a benefit by one party, and the inequity of allowing that party to retain the benefit without compensating the performing party. Courts are generally reluctant, however, to create an implied-in-law contract except where justice demands it and the creation of a fictional contract would not be contrary to public policy. *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997); *In the Matter of Estate of Lewis*, 168 Mich App 70, 74; 423 NW2d 600 (1988). At first glance, the equities appear fairly even in this matter. On the one hand, Dr. Lie provides a valuable service. Indeed, he earned the adulation of nearly everyone involved because of his efforts in reducing the

(…continued)

> The initial evaluation by a carrier of the appropriateness in terms of both the level and the quality of health care and health services provided an injured employee, based on medically accepted standards. A utilization review shall be accomplished by a carrier pursuant to a system established by the bureau that identifies the utilization of health care and health services above the usual range of utilization for the health care and health services based on medically accepted standards and provides for acquiring necessary records, medical bills, and other information concerning the health care or health services. [MCL 418.315(5); MSA 17.237(315)(5).]

[6] The newly revised HCS rules that took effect in May 2000 continue to require outpatient surgical facilities, such as the one operated by Dr. Lie, to be licensed for reimbursement purposes. For example, R 418.101022(1) provides that reimbursement may be made for a "free-standing surgical outpatient facility," so long as the "facility . . . shall be licensed by the state." Further, the rules define "facility" to mean "an entity licensed by the state in accord with the provisions of Act 368, Public Acts of 1978 as amended. The office of an individual practitioner is not considered a facility." R 418.10108(q). Finally, under Part 9, Subpart B, which concerns "facility billing," R 418.10925(1)(a) provides that "[a] facility, other than a hospital, that is licensed by the state shall bill the facility services on the UB-92 national uniform billing claim form and shall include the revenue codes contained in the Michigan uniform billing manual, ICD-9-CM coding for diagnoses and procedures, and CPT codes for surgical, radiological, laboratory, and medicine and evaluation and management services."

costs of certain hand surgeries. On the other hand, Dr. Lie performed this service knowing that his facility was not licensed and that its non-licensed status could prevent reimbursement. Further, Dr. Lie did not exercise his option to enter into private contracts with the insurer to provide for his own reimbursement. Having reviewed the record, it appears to us that Dr. Lie knowingly forfeited reimbursement of his facility charge in this case to create a case in controversy and ultimately to seek an administrative or judicial ruling in support of his claim to reimbursement while remaining unlicensed. On balance, we conclude that equity should not intercede on his behalf to award relief that he willingly forfeited. See *Van Buren Public School Dist v Wayne County Circuit Judge*, 61 Mich App 6, 36; 232 NW2d 278 (1975) (equity favors the party who has done the least to create the dispute.)

Moreover, Dr. Lie had adequate legal remedies. Not only did Dr. Lie have the option to enter into private contracts with individual insurers to provide for reimbursement, Dr. Lie also could have obtained a license for his facility. As a general rule, "equity follows the law" and where the Legislature has provided an adequate legal remedy, the judiciary may not create additional relief by invoking equitable doctrines. *Paschke v Retool Industries*, 445 Mich 502, 521; 519 NW2d 441 (1994) (Brickley, J., concurring). See also *St Helen Resort Assoc, Inc v Hannan*, 321 Mich 536; 33 NW2d 74 (1948). Here, by virtue of § 315(2), the Legislature specifically delegated to the Bureau the authority to promulgate rules pertaining to reimbursable charges to health care providers. The Bureau in turn promulgated the HCS Rules, which expressly provided for reimbursement for the use of outpatient surgical facilities in two instances—where the facility is licensed or where the provider and the insurer contractually agree to reimbursement. Dr. Lie's assertion that the rules create a hardship is one that should be addressed to the Legislature or to the Bureau rather than to the judiciary. See *City of Lansing v Lansing Twp*, 356 Mich 641, 650; 97 NW2d 804 (1959).

Next, Dr. Lie asserts that the WCAC's interpretation of the HCS Rules so as to preclude reimbursement of his usual and customary charge violates his constitutional right to equal protection of the laws, due process of law, and the right to contract. We disagree.

The constitutionality of social and economic legislation, such as the WDCA, is scrutinized under a rational basis standard of review. *Romein v General Motors Corp*, 436 Mich 515, 525; 462 NW2d 555 (1990). In the instant matter, the Legislature delegated to the Bureau the obligation to promulgate appropriate rules for the efficient administration of worker's compensation matters. The Bureau promulgated a rule, for purposes of provider reimbursement, which makes a clear distinction between licensed and unlicensed outpatient surgical facilities. Such a classification is rationally related to the remedial goal of providing adequate health care to injured workers. Thus, Dr. Lie's due process and equal protection arguments fail.

Furthermore, because the HCS rules then in effect expressly permitted providers and insurers to enter into private contracts for reimbursement, Dr. Lie's assertion that the rules abridged his right to contract must also be rejected. R 418.101(4) (rescinded.)

Finally, Dr. Lie raises two issues concerning the extent of this Court's jurisdiction in this matter. Dr. Lie first contends that this Court erred by refusing to docket the other ten appeals representing the consolidated cases decided by the WCAC. At the time that the application for leave to appeal was filed in 1998, this Court properly followed the then existing policy of

requiring filing fees for each lower court or tribunal docket number appealed.[7] Moreover, because, in each of the eleven cases, a single, narrow *legal* issue was raised regarding whether Dr. Lie's facility charge was reimbursable under the WDCA and the HCS rules, our decision in the present case will dispose of all remaining cases. This Court did not err in its handling of the initial application for leave to appeal in 1998. Accordingly, Dr. Lie's request that this Court exercise jurisdiction over the remaining ten cases is hereby denied.

Dr. Lie's second jurisdictional issue concerns *Marcia Kurpiewski v Piper Industries, Inc* (WCAC No. 97-0070), one of the unappealed cases tried before Magistrate Sam Trentacosta in which the Accident Fund Company was the insurer. This Court lacks jurisdiction or authority to issue a binding order against the Accident Fund, given that its status in this appeal is as amicus curiae and not as a party.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper

[7] The current policy is changed somewhat. See, e.g., MCR 7.205, and corresponding Internal Operating Procedures, e.g., IOP 7.205-2, IOP 7.205(B)(7)-2.