STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR JARRAD, Plaintiff-Appellee,	UNPUBLISHED January 27, 2004
v	No. 245068 Ingham Circuit Court
INTEGON NATIONAL INSURANCE COMPANY, Defendant-Appellant.	LC No. 00-092678-NF

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

ZAHRA, P.J. (*dissenting*).

I respectfully dissent. I conclude that defendant should be entitled to set-off the long-term disability wage loss benefits plaintiff received through his employer's self-funded plan because these benefits constituted "other health and accident coverage" that is subject to coordination under MCL 500.3109a.

The majority concludes that this case is governed by *Spencer v Hartford Accident & Indemnity Co*, 179 Mich App 389; 445 NW2d 520 (1989). In *Spencer, supra* at 391, the plaintiff received worker's compensation benefits after he was injured in the course of his employment with a township. Pursuant to a collective bargaining agreement, the township directly paid the difference between the amount of the plaintiff's workers' compensation benefits and his base pay rate. *Id.* The defendant, the no-fault carrier for the township, claimed this payment made by the plaintiff's employer directly to the plaintiff amounted to "other health and accident coverage" that was subject to coordination under MCL 500.3109a. *Id.* This Court concluded that this payment of wages made to the plaintiff directly from his employer pursuant to a collective bargaining agreement did not constitute "other health and accident coverage" under MCL 500.3109a. *Id.* at 400. I conclude that *Spencer* is distinguishable from the present case. In *Spencer*, as opposed to the present case, the "benefit" at issue was compensation for employment that was paid directly to plaintiff by his employer; it was not an insurance-type benefit. Here, plaintiff's collective bargaining agreement provides that long-term disability benefits will be provided for the employee. This long-term disability benefit is a self-funded plan where the employee is paid from accumulated payroll contributions. Benefits payments are made to the employee through a third-party, Aetna Life Insurance Company. The benefit is not paid directly by the employer as it was in *Spencer*. The long-term disability benefit at issue in the present case is exactly the type of benefit subject to coordination under MCL 500.3109a.

I conclude this case is governed by *Rettig v Hastings Mut Ins Co*, 196 Mich App 329, 330; 492 NW2d 526 (1992). In *Rettig, supra* at 330, this Court concluded that the defendant insurance company was entitled to exclude the long-term disability benefits received by the plaintiff under a long-term disability insurance policy that was paid for by the plaintiff through payroll deductions. This Court held that the plaintiff's long-term disability insurance benefits constituted "other health and accident coverage" under MCL 500.3109a, "because they constitute protection *typically provided* by health insurance plans, which include payments for medical expenses resulting from an accident as well as wage-loss replacement benefits." *Id.* at 332-333 (emphasis added). Because long-term disability benefits constitute protection typically provided by health insurance plans, plaintiff's benefits in the present case also constitute "other health and accident coverage" under MCL 500.3109a.

That plaintiff's long-term disability benefits were not actually provided by an insurance company is not dispositive. Although the term "coverage" has been interpreted to mean coverage provided by an insurance company, *LeBlanc v State Farm Mut Automobile Ins Co*, 410 Mich 173, 204; 301 NW2d 775 (1981); *Spencer, supra* at 400, "the Legislature purposely used the broad term 'coverage' rather than 'insurance' in describing health and accident benefits available to the insured independent of the no-fault contract," *Lewis v Transamerica Ins Corp of America*, 160 Mich App 413, 418; 408 NW2d 458 (1987). Michigan courts have found that "other health and accident coverage" encompasses coverage that is typically provided by insurance companies, but is not actually provided by an insurance company under the facts of the case. See, e.g., *Tatum v Gov't Employees Ins Co*, 431 Mich 663; 431 NW2d 391 (1988) (military medical benefits paid by the federal government constitute "other health and accident coverage" under MCL 500.3109a); *LeBlanc, supra* (medicare constitutes "other health and accident coverage" under MCL 500.3109a); *Lewis, supra* (medical benefits provided by a Teamsters Union welfare plan constitutes "other health and accident coverage" under MCL 500.3109a); *United States Fidelity & Guaranty Co v Group Health Plan of Southeast Michigan*, 131 Mich App 268; 345 NW2d 683 (1983) (health maintenance organizations constitute "other health and accident coverage" under MCL 500.3109a); *Bagley v State Farm Mut Automobile Ins Co*, 101 Mich App 733; 300 NW2d 322 (1980) (medical and disability benefits provided by the Army and Veterans Administration constitute "other health and accident coverage" under MCL 500.3109a). The trial court's order granting plaintiff's motion for summary disposition should be reversed, and the trial court should enter an order granting summary disposition for defendant.

/s/ Brian K. Zahra