

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY DASCHKE,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CORPORATION,

Defendant-Appellee.

UNPUBLISHED

June 5, 1998

No. 203479

Jackson Circuit Court

LC No. 95-73881 NF

Before: Holbrook, Jr., P.J. and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order denying his motion for reconsideration of the order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm in part and reverse in part.

Plaintiff filed suit against defendant to recover insurance benefits owing to plaintiff as allowable expenses for vocational rehabilitation to establish a stained glass business pursuant to MCL 500.3107(1)(a); MSA 24.13107(1)(a). Plaintiff sought reimbursement for \$79,838.86 which he incurred for construction of a barrier-free work space, equipment, building permits, instructional videos and an office computer. Plaintiff also sought a declaratory judgment as to defendant's liability for estimated future expenses of approximately \$80,000 for woodworking machinery, hand tools, office equipment and supplies. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff filed a motion to reconsider the ruling pursuant to MCR 2.119(F) on the basis that the complaint included claims for an accommodation as well as vocational rehabilitation. The trial court denied plaintiff's motion in a written opinion and order.

On appeal, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Radtko v Everett, 442 Mich 368, 374; 501 NW2d 155 (1993). The courts are liberal in finding a genuine issue of material fact. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). The party opposing the motion has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994). All inferences are to be drawn in favor of the nonmovant. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

Plaintiff argues that a genuine issue of fact exists as to whether rehabilitation expenses which he incurred were reasonable charges for reasonably necessary products, services or accommodations for his care, recovery or rehabilitation pursuant to MCL 500.3107(1)(a); MSA 24.13107(1)(a). We reverse in part and affirm in part.

Plaintiff was injured in an accident in 1986, which resulted in the amputation of both of his legs below the knee and limited use of his left arm. Sometime after 1990, plaintiff began doing stained glass work in his basement with his wife as a hobby. In 1992, plaintiff attempted to return to work with his former employer but could not continue employment due to unpredictable periods of pain, difficulties with his prostheses and shoulder problems.

In 1993, plaintiff and his wife became the proprietors of a business known as Daschke Stained Glass Parlor. Plaintiff sent defendant his self-employment plan which showed expenses incurred of \$79,838.86 and estimated future expenses of approximately \$80,000. Defendant declined to authorize or agree to pay any of the expenses and advised plaintiff that the claim was ineligible for payment under the no-fault insurance act because it was not submitted within one year and the expenses appeared to be an extension of work loss benefits beyond the three year period rather than expenses for vocational rehabilitation.

Plaintiff's claim is based upon MCL 500.3107(1)(a); MSA 24.13107(a), which provides that personal protection insurance benefits are payable for:

- (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.

The three requirements for an allowable expense under the statute are that (1) the expense must have been incurred, (2) the expense must have been for a product, service, or accommodation reasonably necessary for the injured person's care, recovery, or rehabilitation, and (3) the amount of the expense must have been reasonable. *Booth v Auto-Owners Ins*, 224 Mich App 724, 727; 569 NW2d 903 (1997); *Moghis v Citizens Ins Co*, 187 Mich App 245, 247; 466 NW2d 290 (1991).

Vocational rehabilitation is an allowable expense under MCL 500.3107(1)(a); MSA 24.13107(a). *Kondratek v Auto Club Ins Ass'n*, 163 Mich App 634, 637; 414 NW2d 903 (1987), *Bailey v DAIIE*, 143 Mich App 223; 371 NW2d 917 (1985). An educational program can be a reasonably necessary service for a plaintiff's rehabilitation. *Tennant v State Farm Ins*, 143 Mich App 419, 428-430; 372 NW2d 582 (1985). Whether expenses are reasonably necessary to a plaintiff's

rehabilitation is generally a question of fact for the jury. See *Tennant, supra* at 428, *Nelson v DAIE*, 137 Mich App 226, 231; 359 NW2d 536 (1984).

Defendant argues that the cost of plaintiff's workshop, which constitutes the bulk of the \$79,838.86 claim, is a capital investment in a business to enable plaintiff to replace his lost earning capacity rather than an expense of vocational training. Plaintiff, on the other hand, presented evidence that he is self-taught in the stained-glass business. A "Functional Assessment" of plaintiff, performed by a rehabilitation counselor in the summer of 1996, concluded, among other things, that plaintiff was not competitively employable on a full time basis and that plaintiff had developed craft skills in glass etching, leaded glass design and fabrication. Plaintiff's self-education is comparable to a formal vocational rehabilitation program because he developed identifiable vocational skills. In order to learn and perform these skills, plaintiff alleges that it was necessary to build and equip a barrier-free work space.

Plaintiff has raised a question of fact whether he incurred expenses related to his vocational rehabilitation and has presented a genuine issue of fact under MCR 2.116(C)(10). Whether plaintiff's expenses were reasonable and reasonably necessary "products, services [or] accommodations" for his rehabilitation is also a question of fact for the jury. Accordingly, we hold that the trial court erred in granting defendant's motion for summary disposition.

Plaintiff further contends that the expenses incurred for the workshop qualified as an allowable expense for a purpose other than vocational rehabilitation. We disagree. Plaintiff has not presented any evidence to show that the workshop was reasonably necessary for his care, recovery or rehabilitation, other than for vocational rehabilitation. Accordingly, we hold that the trial court did not err in granting defendant's motion for summary disposition as to plaintiff's claim that he incurred allowable expenses for some other purpose than vocational rehabilitation.

Reversed in part and affirmed in part.

/s/ Donald E. Holbrook, Jr.

/s/ Roman S. Gribbs

/s/ Robert J. Danhof