

STATE OF MICHIGAN
COURT OF APPEALS

ALL-STAR PHYSICAL THERAPY,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED

March 21, 2024

No. 364751

Macomb Circuit Court

LC No. 2022-000662-NF

Before: CAVANAGH, P.J., and JANSEN and MALDONADO, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted¹ the trial court’s order denying its motion for summary disposition pursuant to MCR 2.116(C)(4) (subject-matter jurisdiction), (8) (failure to state a claim), and (10) (no genuine issue of material fact). We affirm.

I. FACTS

In November 2020, Nosa Tomecca was injured in a car accident, and plaintiff began providing her physical-therapy services. Tomecca assigned her rights in her no-fault personal injury protection insurance (PIP) benefits payable to plaintiff. On July 15, 2021, defendant conducted a utilization review of the physical-therapy services plaintiff had been providing to Tomecco. This review cited guidelines recommending a maximum of 6 therapy sessions for her lower back injury and 10 sessions for her shoulder injury, but Tomecco had already received 71 therapy sessions, with what defendant determined was “no documentation of significant functional improvement from the provided treatment.” Defendant then stopped reimbursing plaintiff, but Tomecco continued to utilize plaintiff’s services, having received 137 sessions as of December 2021.

¹ *All-Star Physical Therapy v Auto Club Ins Ass’n*, unpublished order of the Court of Appeals, entered March 8, 2023 (Docket No. 364751).

In February 2022, plaintiff filed suit against defendant pursuant to MCL 500.3112, claiming \$99,960 in principal benefits, along with interest and attorney fees. Defendant filed a motion for summary disposition, arguing that plaintiff had failed to appeal defendant's utilization-review determination with the state and had therefore failed to exhaust its administrative remedies. Thus, the trial court did not have subject-matter jurisdiction, plaintiff did not have standing, and plaintiff failed to state a claim upon which relief could be granted. Plaintiff argued in response that the utilization-review process was "an optional, not exclusive, remedy." The court agreed with plaintiff and denied defendant's motion for summary disposition.

This appeal followed.

II. ANALYSIS

Defendant's argument that the trial court erred by allowing plaintiff's cause of action pursuant to MCL 500.3112 when plaintiff had not administratively appealed defendant's utilization review is without merit because it has been heard and rejected by a published opinion of this Court.

We review de novo a trial court's decision to grant or deny a motion for summary disposition, and the evidence is viewed in a light most favorable to the nonmoving party. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Statutory interpretation presents a question of law subject to review de novo. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 102; 754 NW2d 259 (2008).

PIP benefits are payable for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). Those "benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2). MCL 500.3112 grants healthcare providers the right to "make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person."

MCL 500.3157a(3) sets out the procedures for a "utilization review" in which the state assesses the necessity of the services being provided. MCL 500.3157a(5) provides:

If an insurer . . . determines that a physician, hospital, clinic, or other person overutilized or otherwise rendered or ordered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under this chapter, the physician, hospital, clinic, or other person may appeal the determination to the department under the procedures provided under subsection (3).

Defendant, citing MCL 500.3157a(5), argues that plaintiff's lawsuit was not ripe because it had not exhausted its administrative remedy. Plaintiff, however, argues that the utilization review was a nonexclusive, optional remedy and that it was free to file suit in the circuit court without first seeking administrative relief.

A prior published opinion of this Court has answered this question in plaintiff's favor. In *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 362094); slip op at 1-3, this Court was presented with a materially indistinguishable fact pattern and an identical argument. This Court held "that the administrative appeal provided by MCL 500.3157a(5) . . . was permissive, not mandatory." *Id.* at 11. Therefore, the plaintiff "could file suit under MCL 500.3112 without exhausting the permissive, nonexclusive administrative appeal." *Id.* *True Care Physical Therapy* is a published opinion of this Court issued after November 1, 1990, and is therefore binding. MCR 7.215(J)(1). Accordingly, we are bound to affirm.²

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Allie Greenleaf Maldonado

² The Supreme Court has ordered oral arguments in the *True Care* case. See *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, ___ Mich ___; 995 NW2d 832 (2023). However, "[t]he filing of an application for leave to appeal in the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(2).