

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 5, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP868-FT

Cir. Ct. No. 2004SC1251

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

MICHAEL F. LANOIS,

PLAINTIFF-RESPONDENT,

V.

EYE COMMUNICATION SYSTEMS, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:

JACQUELINE R. ERWIN, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Eye Communication Systems, Inc. (ECS) appeals from a judgment awarding Michael F. Lanois \$4420 plus costs. ECS contends that the circuit court erred when it determined that Lanois was entitled to summary judgment on his claim for insurance coverage of certain hospital and anesthesia charges. We disagree and affirm the judgment of the circuit court.

FACTS

¶2 Lanois was employed by ECS and covered by the medical plan offered by ECS. During the course of his employment, Lanois needed restorative dental work done. Due to Lanois' fear of dentists, his dentist recommended that the restorative work be performed in a hospital under general anesthesia and wrote a letter on his behalf. In September 1999, the health plan administrator, Benefit Administrative Systems, Ltd., responded that Lanois would not be covered for the anesthesia and outpatient dental services because his condition did not meet the criteria for a serious medical condition under the plan.

¶3 On May 25, 2000, Lanois' physician, Dr. William Boehm, wrote to Employee Benefit Claims of Wisconsin, Inc. seeking preapproval of the hospitalization and anesthesia expenses. In June 2000, the claims department of Employee Benefit Claims requested more information before Lanois' preapproval could be processed. Dr. Boehm responded to the request. On January 22, 2001, Lanois received preapproval for ambulatory surgery and anesthesia from an Employee Benefit Claims examiner. Lanois had the restorative dental work performed on March 7, 2001.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 After the procedure, ECS refused to pay the hospital charges of approximately \$8840. In June 2001, ECS reconsidered and paid half of the bill, leaving an unpaid balance of approximately \$4420. Lanois paid the balance and filed this action in small claims court. ECS answered, alleging that the restorative dental work was not preauthorized and not covered under the company's medical insurance plan. Upon motions for summary judgment by both parties, the circuit court determined that Lanois, not ECS, was entitled to summary judgment. ECS appeals.

DISCUSSION

¶5 When facts are undisputed and the sole issue is the interpretation of an insurance policy, a question of law is presented which is appropriately decided on summary judgment. *See Greene v. General Cas. Co. of Wis.*, 216 Wis. 2d 152, 157, 576 N.W.2d 56 (Ct. App. 1997). We review the circuit court's decision to grant summary judgment de novo, applying the same methodology. *See id.* Furthermore, the interpretation of a term in the ECS medical plan presents a question of contract law that we review de novo without deference to the circuit court. *See id.*

¶6 Here, the only issue before us is whether the circuit court correctly determined that the ECS medical plan covered the expenses related to Lanois' restorative dental work. The provision at issue here states as follows: "Expenses billed by a Hospital for Inpatient and Outpatient dental services will be covered if the Plan Member has a serious medical condition that requires hospitalization." ECS argues that Lanois' fear of dental work was "not a 'serious medical condition' as defined under [the medical plan]." However, ECS does not provide us with any contract language defining "serious medical condition." Lanois

asserts that the phrase is not defined by the plan, and our review of the record supports this assertion.

¶7 The circuit court looked to other policy definitions to determine whether Lanois' fear was contemplated by the coverage provided in the medical plan. When a key term in a policy is left undefined, it is appropriate to look at other policy definitions to ascertain the intended meaning. *See, e.g., Ermenc v. American Family Mut. Ins. Co.*, 221 Wis. 2d 478, 481-82, 585 N.W.2d 679 (Ct. App. 1998) (looking to other policy definitions to determine whether insured's cancer was a covered condition where "condition" was not defined in the policy). The ECS medical plan defines "mental/nervous disorder(s)" as "a psychiatric or emotional disorder recognized as such by the American Psychiatric Association" which includes but is not limited to "psychotic, bi-polar, [and] psychoneurotic disorders."² The court relied on this definition, as well as expert opinion evidence regarding Lanois' fear of dentists, to hold as follows:

[T]he only fact issue that was raised here was the validity of an M.D.'s opinion on a matter of mental or nervous disorder. [ECS] does not offer contrary evidence regarding the affidavit letter opinion evidence that we have....

The challenge that's raised by [ECS] to this opinion evidence does not create an issue of fact. There are no countervailing opinions or supporting materials. And so I conclude that there is no question but that the M.D.-diagnosed phobia, which results in catatonia, is a mental ... or nervous disorder and, therefore, a "sickness" under the Medical Health Plan

² We note that the medical plan definitions relied upon by ECS are included in the appendix of its brief-in-chief, but are not contained in the record. However, the circuit court stated that it had before it "all of the pieces of the two policies," and Lanois acknowledges that the definition used here is the one considered by the circuit court at the summary judgment hearing.

While the primary condition that was addressed March 7th of 2001 was dental work, an essential secondary and related condition [of] treatment was hospitalization for this nervous disorder which was diagnosed. That treatment is covered by the Medical Plan.

¶8 ECS contends that the circuit court acted outside the bounds of its discretion when it determined that Lanois' fear of dentists was a mental or nervous disorder under the plan. ECS simply states that the "Court is not a spokesperson for the American Psychiatric Association and therefore cannot decide that [Lanois'] phobia of dentists is a 'mental or nervous disorder' under the plan." Here, however, the circuit court deferred to the only expert medical evidence offered on the issue. ECS did not offer any evidence to dispute Dr. Boehm's opinion of Lanois' phobia. The circuit court's determination that Lanois' extreme fear of dentists constitutes a mental or nervous disorder as defined in the plan is supported by the evidence and is a reasonable interpretation of the term "serious medical condition."

¶9 ECS also contends that Lanois' failure to exhaust the independent review procedure established in accordance with WIS. STAT. ch. 632 deprived the circuit court of jurisdiction over the claim. On the contrary, WIS. STAT. § 632.835(2)(a) states that an insured *may* ask for independent review if a claim is denied. The statute does, however, obligate ECS to notify an insured of the availability of an independent review. Sec. 632.835(2)(b). ECS claims that it was under no legal duty to provide [Lanois] with notice of the right to an independent review of his claim. ECS does not offer any legal argument to reconcile its position with the express terms of § 632.835(2)(b). ECS's medical plan provides notice that an insured is entitled to a written explanation if a claim is denied and to review and reconsideration by the plan administrator. The plan also states that if a

claim for benefits is “denied or ignored, in whole or in part, [the insured] may file suit in a State or Federal court.”

¶10 As a final matter, we consider Lanois’ motion to deem ECS’s appeal frivolous and to impose sanctions. Lanois argues that the appeal is frivolous because ECS has violated several rules of appellate procedure. However, we discern no malicious intent or bad faith in ECS’s appeal. We conclude that the appeal does not oblige the imposition of frivolous costs under WIS. STAT. RULE 809.25(3).

¶11 Nonetheless, Lanois’ allegation that ECS has violated multiple rules of appellate procedure is well-founded. For example, in its appellate brief, ECS provides but two record citations to support its statement of the facts. WISCONSIN STAT. RULE 809.19(1)(d) requires an appellant to file a brief containing a statement of facts “with appropriate references to the record.” The court of appeals does not have the duty or the resources to sift and glean the record to determine whether it supports the appellant’s arguments. *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Also, ECS’s appellate brief falls short of the requirements of RULE 809.19(1)(e), which requires that an argument contain “citations to the authorities, statutes and parts of the record relied on” for its contentions. Finally, ECS included a number of documents in the brief’s appendix that were not made part of the official record, contrary to RULE 809.19(2).

¶12 Briefs that do not comply with the rules of appellate procedure make it difficult for us to efficiently address the appeal. In *State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980), we stated that we would not consider inadequate arguments or appeals that otherwise do not comply with the

rules of appellate procedure. Here, we have given ECS's arguments our full consideration, but we conclude that noncompliance with the rules merits sanctions under WIS. STAT. RULE 809.83(2). We have the authority under RULE 809.83(2) to impose monetary sanctions for failure to comply with the rules of appellate procedure; therefore, we order a monetary penalty of \$50 to be paid by the attorney for ECS. Furthermore, costs are available to Lanois under WIS. STAT. RULE 809.25(1).

CONCLUSION

¶13 We conclude that Lanois is entitled to judgment as a matter of law. The medical plan covers outpatient dental services when a serious medical condition exists. Further, the plan covers mental and nervous disorders. Because there is no material factual dispute and the circuit court's interpretation of the medical plan language is sound, we affirm the summary judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

