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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals Holds Unlicensed Adult Foster Care Not Reimbursable Under No-Fault Act

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In the unpublished decision of *Keys of Life v Auto-Owners Insurance Company*, unpublished per curiam decision of the Michigan Court of Appeals, issued December 27, 2016 (Docket No. 328227), a panel of the Court of Appeals recently held that adult foster care provided by an unlicensed adult foster care facility is not compensable under the no-fault insurance act. The case concerned care rendered to Mr. Mowrer, who was undisputedly seriously injured in an automobile accident. It was also undisputed that Defendant Auto-Owners Insurance Company was the primary insurer liable for services provided to Mr. Mowrer that were reimbursable under the No-Fault Act.

In the trial court, Defendant moved for summary disposition contending that Plaintiff, Keys of Life, was not entitled to reimbursement under the No-Fault Act because it was acting as an unlicensed adult foster care facility and was thus not lawfully rendering treatment under MCL 500.3157. This statute provides that “A physician, hospital, clinic, or other person or institution *lawfully rendering treatment* to an injured person for an accidental bodily injury covered by personal protection insurance . . . may charge a reasonable amount for the products, services and accommodations rendered” (emphasis added). The trial court denied Defendant’s motion for summary disposition under MCL 500.3157, finding that Plaintiff did not unlawfully render treatment.

The Court of Appeals reversed. First, the Court of Appeals explained, “treatment is not lawfully rendered if the performance of that treatment requires a license and the provider acts without a license.” And, the panel noted, pursuant to statute, adult foster care services may not be provided without a license. Looking to the Adult Foster Care Facility Licensing Act’s definition of “foster care” – “the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation” – the panel concluded that the evidence showed that plaintiff did in fact provide adult foster care services to Mr. Mowrer. Further, it was undisputed that Plaintiff’s facility was not licensed.

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Adult foster care is broadly defined as “the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks, for compensation.” If an injured person receives services of this nature, they will only be compensable under the No-Fault Act if the provider was licensed to provide adult foster care.

The Court of Appeals rejected Plaintiff’s argument that MCL 500.3157 was inapplicable because the services Plaintiff provided were not “treatment.” The panel reasoned that the previous holding of the Court in *Healing Place at N Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51 (2007), that unlicensed adult foster care services were not compensable under MCL 500.3157, necessarily required the conclusion that adult foster care services constitute treatment under that section.

The panel did hold that Plaintiff could recover for other services lawfully rendered, even if it could not recover for adult foster care services. The Court noted that it is Plaintiff’s burden to establish that any services provided by Keys of Life were compensable.

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