

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

ANDREW R. PHELPS,

Case No. 21-08830-NF

Plaintiff,

v

AUTO CLUB GROUP INSURANCE
COMPANY D/B/A/ AAA OF
MICHIGAN,

Defendant.

OPINION & ORDER
RE: PLAINTIFF ANDREW
PHELPS' EMERGENCY
MOTION FOR PRELIMINARY
INJUNCTION AND TO
COMPEL PAYMENTS UNDER
THE NO-FAULT ACT

ORDER

At a session of said Court, held in the Kent County Courthouse
in the City of Grand Rapids, in said county on November 2, 2021

Present: HON. CHRISTINA ELMORE
Circuit Court Judge

Plaintiff Andrew Phelps moves for a preliminary injunction. He seeks to order Defendant Auto Club Group Insurance Company ("AAA") to process and pay all of Plaintiff's homecare provider bills from July 2, 2021 through the end of this litigation at a rate of \$30.00 per hour for high-tech home care, \$190.00 per visit for all nursing visits, and fully pay Plaintiff's case manager bills. For the reasons explained below, Plaintiff's Motion is GRANTED.

I. FACTS AND BACKGROUND

The underlying Complaint involves a claim of breach of contract and obligations under the no-fault act related to Defendant allegedly failing to pay reasonable, customary, and fair fees charged for Plaintiff's medical care. Plaintiff claims Defendant is refusing to fully pay Plaintiff's care provider and case manager since July 2021 imposition of fee schedules under the 2019 amendment to the no-fault law. For over twenty years, Defendant

has paid for Plaintiff's 24/7 care and accommodations due to extensive injuries caused by a motor-vehicle accident in 1998. Plaintiff is a quadriplegic and needs assistance with all activities of daily living. He also suffers from life-threatening conditions, which his caregivers monitor and must address with specialized care.

Plaintiff now requests emergency injunctive relief from this Court, ordering Defendant to pay the rates it previously paid. Without this relief, Plaintiff argues his care providers will financially be unable to continue providing care, resulting in Plaintiff losing the care he relies on and putting his safety and life at risk.

Defendant responded, arguing there is no precedent for issuance of a preliminary injunction in this case. Defendant argues Plaintiff cannot satisfy any of the four factors warranting the issuance of a preliminary injunction because he has not established an "imminent threat of irreparable harm" and is unlikely to succeed on the merits.

A hearing was held on October 29, 2021 where the parties were given the opportunity for oral argument. This Court took the matter under advisement.

II. STANDARD OF REVIEW

A party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued. MCR 3.310(A)(4).

When reviewing a motion for a preliminary injunction, a court must consider the following four factors:

- (1) the likelihood that the party seeking the injunction will prevail on the merits,
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is issued.

Alliance for Mentally Ill of Mich v Dep't of Cmty Health, 231 Mich App 647, 661 (1998).

III. LAW AND ANALYSIS

Plaintiff claims Defendant is clearly liable for a direct violation of MCL 500.3142 and breach of contract, so he is likely to succeed on the merits.

After hearing oral argument from both sides, a thorough reading of the parties' written arguments, and consideration of their positions; this Court finds there is ample evidence Plaintiff is likely to prevail in the underlying action.

It is obvious that Defendant contracted with Plaintiff to pay for the relevant care as evidenced by twenty (20) plus years of making payments to Plaintiff's various providers.

Furthermore, MCL 500.3142 states such payments are payable as accrued and overdue if not paid within thirty (30) days.

Plaintiff argues he will be irreparably harmed if injunctive relief is not given. “[A] particularized showing of irreparable harm . . . is . . . an indispensable requirement to obtain a preliminary injunction.” *Mich Coal of State Emp Unions v Mich Civil Serv Comm’n*, 465 Mich 212, 225-226 (2001). “[A]n injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.” *Michigan AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 149 (2011). Furthermore, when evaluating an alleged injury, a court must consider “the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.” *Michigan AFSCME Council 25 v Woodhaven-Brownstown School Dist*, 293 Mich App 143, 149 (2011).

In this case, the risk of irreparable harm to Plaintiff appears to be extensive and possibly life-threatening. Pursuant to sworn affidavits from Plaintiff’s caregivers, without the continued payment for services rendered, they will soon be financially unable to continue providing 24/7 care required for Plaintiff. Without their services or while similar services are sought, Plaintiff’s life is potentially at risk while awaiting trial in this matter.

While Defendant may risk losing funds over the course of this case, in weighing the balance of harms, a person’s health and safety prevail over a company’s financial losses. Pursuant to *Sherman v Sea Ray Boats, Inc*, “[c]oncerns regarding physical safety are generally more pressing than concerns regarding economic loss.” 251 Mich App 41, 53-54; 649 NW2d 783 (2002). Furthermore, Defendant has been paying Plaintiff’s medical providers this rate for a number of years and continuing to do so would maintain the status quo.

Defendant cites *Bratton v Detroit Auto Inter-Insurance Exchange*, 120 Mich App 73, 327 NW2d 396 (1982) in arguing a preliminary injunction would severely distort the status quo. In *Bratton*, the Michigan Court of Appeals stated if payment were made to the plaintiffs and the defendant ultimately prevailed in the case, “it would be unable to recover the benefits it paid to the plaintiffs. . . distort[ing] considerably the status quo which existed prior to the plaintiffs commencing their actions.” *Id* at 80. This Court respectfully disagrees that the circumstances of the case at bar are comparable to those in *Bratton*. *Bratton* was examined by a neurological surgeon after he left his job, claiming his injuries prevented him from working. *Id* at 75-76. The surgeon found *Bratton* was not disabled, yet the trial court granted a preliminary injunction on behalf of *Bratton*, ordering Detroit Auto Inter-Insurance Exchange to pay Plaintiff’s PIP benefits at issue in the lawsuit. *Id* at 76. The Michigan Court of Appeals found the preliminary injunction was erroneously ordered because there was a factual dispute over whether *Bratton* was disabled. *Id* at 80.

In the underlying case, there is no question Plaintiff is disabled and has required 24/7 care for decades. This Court finds the severity of Plaintiff’s injuries and clear necessity of his caregivers sets this case apart from the circumstances in *Bratton*, which did not demonstrate denial of a preliminary injunction could be life-threatening.

This Court further finds no harm to the public interest in ordering this preliminary injunction. Not only is there no harm to the public interest; as argued by Plaintiff, the public has a clear interest in ensuring the most vulnerable members of society receive the care they require.

In conclusion, this Court finds a preliminary injunction is appropriate. Defendant shall immediately pay for Plaintiff's homecare provider bills at the rates previously paid, i.e. \$30 per hour for high-tech homecare, \$190 per visit for nursing visits, and case management, from July 2, 2021 until further order of this Court.

IT IS SO ORDERED.

Dated: November 2, 2021



CHRISTINA ELMORE
Circuit Court Judge

ATTEST: A true copy



I do hereby certify and return that I served a copy of the above order upon the parties personally at the motion hearing.

Dated:

CHNELL GUYDON, Court Clerk