

STATE OF MICHIGAN  
IN THE SUPREME COURT

BRONSON METHODIST HOSPITAL,  
a Michigan non-profit corporation,

Supreme Court No. 151344

Plaintiff/Appellee,

Court Of Appeals Case No. 317864 and  
317866

v.

Kalamazoo County Circuit Court No.  
12-0600-NF

MICHIGAN ASSIGNED CLAIMS  
FACILITY,

Defendant/Appellant.

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DEFENDANT-APPELLANT MICHIGAN ASSIGNED CLAIMS PLAN'S  
SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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The Court requested supplemental briefing addressing “whether the Court of Appeals erred when it concluded that the defendant Michigan Assigned Claims Plan could not deny the plaintiff hospital’s application for assignment of its claim for benefits as ‘an obviously ineligible claim,’ MCL 500.3173a.” As explained in the Michigan Assigned Claims Plan’s<sup>1</sup> (“MACP”) Application for Leave to Appeal (the “Application”), the Court of Appeals incorrectly interpreted the applicable statutory language and erroneously shifted the burden of investigating insurance coverage onto the MACP when the claim at issue was “obviously ineligible” for benefits under the MACP. Based on the facts presented in this case, it was evident that Mr. Esquivel would not be eligible for benefits through the MACP. Accordingly, the MACP denied Plaintiff’s claim as obviously ineligible pursuant to MCL 500.3173a. The Circuit Court correctly granted the MACP summary disposition, but the Court of Appeals disagreed and erroneously reversed. The MACP fully incorporates and supplements those arguments made in MACP’s Application with the following information, per this Court’s request.

### **ARGUMENT**

The Court of Appeals erred when it found that the MACP could not deny Plaintiff’s claim as “obviously ineligible” because (1) under either of the insurance scenario presented by this case, Mr. Esquivel was ineligible for benefits through the MACP (in other words, the claim

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<sup>1</sup> As explained in the MACP’s Application, references to the MACP are intended to refer to the Defendant-Appellant in this case. The Michigan Assigned Claims Facility (“ACF”), which Plaintiff filed its Complaint against in this case, is no longer in existence. As explained in the Application, the ACF was statutorily eliminated pursuant to amendments to MCL 500.3171 of the Michigan Automobile No-Fault Act, MCL 500.3101 et seq. (“No-Fault Act”). (Application, pp 1-3). The operations of the ACF were transferred from the Secretary of State to the Michigan Automobile Insurance Placement Facility, which now administers the Michigan Assigned Claims Plan (“MACP”). The MACP conveyed this fact to the Plaintiff and asked the Plaintiff to stipulate to a substitution of parties. The Plaintiff refused to do so; however, because the MACP is the correct name of the entity involved in this case (as recognized by the Circuit Court (see Exhibit G to the Application, p 21)), references to the MACP are intended to refer to the Defendant-Appellant in this case.

was “obviously ineligible”) and no further factual development was necessary or appropriate, (2) in the event of doubt, the statutory scheme makes clear that the claimant, not the MACP, carries the burden of establishing entitlement to PIP benefits, and (3) such a result is contrary to the goals of the No-Fault Act.

**I. PLAINTIFF’S CLAIM WAS OBVIOUSLY INELIGIBLE FOR BENEFITS UNDER THE MACP.**

Prior to the adoption of the current versions of MCL 500.3173a in 1984, the Michigan Secretary of State was responsible for administering claims filed with the Michigan Assigned Claims program. That authority was strictly circumscribed however, and precluded the Secretary of State from doing anything with a submitted claim other than sending it off to a servicing carrier. When the Secretary attempted to promulgate administrative rules that would have allowed the Secretary to deny an “obviously ineligible” claim, the rules were struck down on the basis that they were contrary to the program’s authorizing statute. *Jackson v Sec of State*, 105 Mich App 132, 139; 306 NW2d 422 (1981)(holding that the Secretary did not have the statutory authority to evaluate claims filed).

Thereafter, the Legislature amended the Code to add MCL 500.3173a which expressly incorporates the language previously promulgated by the Secretary of State in its overturned administrative rule, granting the MACP the authority to deny a claim that is “obviously ineligible.” MCL 500.3173a(1). Comparing the administrative rule invalidated by the *Jackson* case with the amended statute leaves no ambiguity as to the Legislature’s intent on whether the MACP has the necessary statutory authority and mandate to make “an initial determination of a claimant’s eligibility” and deny those claims that are “obviously ineligible.” *Id.* And, of course, this clear statutory language expressing the Legislature’s intent must be enforced by this Court. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002); *People v Stone*, 463

Mich 558, 562; 621 NW2d 702 (2001).

The Court of Appeals found that the Circuit Court improperly granted summary disposition to the MACP because it was “unclear on this undeveloped record” that Mr. Esquivel would be disqualified for benefits pursuant to MCL 500.3173 because Mr. Esquivel’s exact insurance status is unknown. (Opinion, pp 7-8). The Court of Appeals stated that the “MACP has not yet carried its burden as the moving party to demonstrate with admissible evidence, rather than speculation, that Bronson was ‘obviously ineligible’ to make a claim for benefits.” (Opinion, p 8). Based on the fact that Mr. Esquivel’s exact insurance status is unknown, the Court of Appeals concluded that “Bronson’s claims fall squarely within that portion of MCL 500.3172(1) addressing claims for which ‘no personal protection insurance applicable to the injury can be identified’” and the Court of Appeals remanded the case back to the Circuit Court. (Order, pp 8-9). The Court of Appeals’ conclusions, however, err at each turn.

First, the Court of Appeals erred by stating that Mr. Esquivel’s exact insurance status must be known in order to determine the eligibility of the claim to the MACP. This conclusion is wrong on the facts of this case because there are only two alternative scenarios, and coverage is barred in each. The following facts are known and undisputable:

- Mr. Esquivel was the owner and operator of the motor vehicle in question;
- Mr. Esquivel’s vehicle was the sole vehicle involved in the accident;
- No one but an intoxicated Mr. Esquivel was injured in the accident, forcing Bronson to claim PIP benefits through standing in his shoes.

*See* Application, Statement of Facts, and Exhibits B and C.

An owner and operator of a motor vehicle is required to have no-fault insurance. If Mr. Esquivel did not have insurance, he is barred as a matter of law from claiming PIP benefits from

anyone, including the MACP. MCL 500.3113(b); *Botsford General Hosp v Citizens Ins Co*, 195 Mich App 127, 129; 489 NW2d 137 (1992) (“Under Michigan law, the owner of an uninsured motor vehicle in an accident is ineligible for no-fault benefits, including benefits through the assigned claims plan.”). If he had insurance, then he would not have a claim for benefits against the MACP because his own insurer would have priority for paying the claim, MCL 500.3114(1), making him ineligible to collect from the MACP. MCL 500.3173a. If Mr. Esquivel can be located and required to give a deposition at this late date, he can only give one of two responses: he either had insurance or he did not. In either scenario, he has no claim against the MACP. If he claims not to know whether he had insurance or not (something that would be evident by checking his certificate of insurance that he is required to carry in his car), then he is not able to establish that he is an eligible claimant under the No-Fault Act and once again, his claim was properly denied as obviously ineligible.

Notably, although the Court of Appeals appears to require the MACP to do the legwork and track Mr. Esquivel down and depose him before it denies his claim, there is nothing in the statute that would require such a course of events. Moreover, there is no information from his deposition that would change this ineligible claim to an eligible one. He had insurance or he did not, and if he had the proper insurance, he would know who issued his policy. By requiring additional fact finding, the Court of Appeals erred.<sup>2</sup>

Although the statute does not define “obviously ineligible,” the term itself is rather self-explanatory. Both Webster’s Ninth New Collegiate Dictionary and MCL 500.3173 help to

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<sup>2</sup> Plaintiff made the argument in its Response to the MACP’s Application that the MACP must evaluate Plaintiff’s (i.e., the healthcare provider) eligibility rather than the injured person—Mr. Esquivel. (Response, p 20). As the MACP stated in its Reply Brief, such an argument is without merit. (Reply, pp 3-5). Any right to make a claim on behalf of Mr. Esquivel by Plaintiff, if such a right exists, is clearly dependent upon Mr. Esquivel’s eligibility and entitlement.

further define the term. Webster's Ninth New Collegiate Dictionary, in relevant part, defines "obvious" as "easily discovered, seen or understood" and "eligible" as "qualified to be chosen". The statutory scheme described above makes clear that the following claimants are "obviously ineligible" (or easily understood not to qualify) for benefits under the MACP: (1) persons who because of a limitation or exclusion in MCL 500.3105 to 500.3116 are disqualified from receiving PIP benefits under a policy otherwise applying to his or her injury (MCL 500.3173), (2) persons not entitled to claim PIP benefits because of accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle (MCL 500.3172(1)), and (3) assuming that the claimant is not otherwise disqualified from receiving PIP benefits and is entitled to PIP benefits, persons that do not meet one of the four criteria listed in MCL 500.3172. Thus, if it is easily discovered, seen or understood that a claimant is not qualified to receive benefits under the MACP or otherwise not qualified for benefits because of an exclusion or limitation in the No-Fault Act, then the MACP must deny the claim.

Furthermore, the conclusion reached by the Court of Appeals that this may be a situation where the insurer cannot be "identified" under MCL 500.3172(1) does not withstand scrutiny under the complete statutory scheme. Starting first with the applicable statutes, there are three statutes that control the entitlement to benefits, not just the one cited by the Court of Appeals. None of those statutes place the burden of identification upon the MACP. The three statutes are first, MCL 500.3173a(1), which provides as follows:

The Michigan automobile insurance placement facility **shall make an initial determination of a claimant's eligibility** for benefits under the assigned claims plan **and shall deny an obviously ineligible claim**. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

(Emphasis added).

Second, MCL 500.3173 reads:

A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury **is also disqualified from receiving benefits under the assigned claims plan.**

(Emphasis added).

And, finally, MCL 500.3172(1) provides:

A person **entitled** to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, **no personal protection insurance applicable to the injury can be identified,** the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

(Emphasis added). Because these statutory provisions all relate to the same subject matter, they must be read together in order to understand the Legislature's intent. *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396, 412; 596 NW2d 164 (1999) ("In general, where statutes relate to the same subject matter, they should be read, construed, and applied together to distill the Legislature's intent.").

In short, this statutory scheme provides that once an individual has applied for benefits under the assigned claims plan, the MACP must make an initial determination of eligibility. MCL 500.3173a. By statute, the MACP "**shall** deny an obviously ineligible claim." *Id.* (emphasis added). Once an initial determination of eligibility is made, the MACP assigns the

claim to a servicing insurer. *Id.* and MCL 500.3174. In other words, after an individual applies for benefits under the MACP, the MACP's first inquiry is whether or not the claimant is initially eligible. This threshold question must be answered before the claim is assigned. If the claimant is obviously ineligible, then the MACP's obligation to assign the claim or further process a claim is terminated.

As discussed *infra*, the material facts necessary to determine Mr. Esquivel's eligibility were clear and unambiguous—Mr. Esquivel was the owner and operator of the motor vehicle involved in the accident, which was titled and registered in Michigan, and he was the only person and drove the only vehicle involved in the accident. Thus, there were only two possible insurance scenarios, and he is not entitled to benefits under either.

Yet, the Court of Appeals' decision requires the MACP to expend resources to conclusively determine under which scenario Mr. Esquivel should be denied or assign the claim and force the servicing insurer to expend unnecessary resources to prove the basis of the lack of eligibility. There is no statutory basis for the Court to conclude that the Legislature intended to make the MACP some sort of detective agency, charged with hunting for possible sources of insurance when the claimant has not presented a case in which benefits would be payable.

The Court of Appeals, by finding that the MACP failed to carry *its* burden that Plaintiff's claim was "obviously ineligible", failed to take into account the irrelevancy of Mr. Esquivel's exact insurance status in this case and shifted the burden of investigating insurance coverage and an appeal of denial of coverage onto the MACP. As explained above, the factual record was sufficient for the Circuit Court to grant summary disposition in favor of the MACP. Indeed, under the Court of Appeals' decision, the MACP now cannot make an initial determination as to

a claimant's eligibility without deposing the injured person to see whether or not he or she was insured.<sup>3</sup> (Order, p 8).

Placing such a burden on the MACP is akin to making a no-fault insurer bear the burden of proof with respect to a claim for no-fault benefits submitted by a claimant. This is clearly not the law of Michigan. Even when a claimant has an insurance policy with a particular insurer, that claimant still bears the burden of proof to establish that the claimant is eligible to receive each and every benefit provided by statute. For example, in *Nasser v Auto Club Ins Ass'n*, 435 Mich 33; 457 NW2d 637 (1990), the Supreme Court emphatically rejected placing the burden of proof in a claim for no-fault benefits on the insurer rather than the claimant. This Court stated:

Under this statutory scheme, an insurer is not liable for any medical expense to the extent that it is not a reasonable charge for a particular product or service, or if the product or service itself is not reasonably necessary. The plain and unambiguous language of § 3107 makes both reasonableness and necessary explicit and necessary elements of a claimant's recovery, and thus renders their absence a defense to the insurer's liability. In addition, the burden of proof on these issues lies with the plaintiff.

*Nasser*, 435 Mich at 49 (emphasis added).

Plaintiff here has no less of a burden just because it is filing the claim with the MACP rather than with an insurance company. A no-fault claimant cannot just show up at the door of an insurance company and state that he or she has been injured in an auto accident and submit bills to be paid. *Nasser, supra*, 435 Mich at 48-49. Given that an ordinary no-fault claimant has the burden to show that they are eligible to receive benefits, and that each and every expense is reasonable and necessary, it makes no sense to eliminate these critical burdens when the claim lands in the MACP because the healthcare provider does not have another home for it.

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<sup>3</sup> Or perform even further discovery and investigation where, as here, a provider makes the claim without obtaining any insurance information from the injured person.

The Legislature's use of the word "entitled" in the first sentence of Section 3172(1) provision highlights the Legislature's intention. This provision makes clear that only a person is otherwise entitled to receive PIP benefits under the No-Fault Act may obtain benefits through the MACP under certain circumstances (i.e., whether he or she satisfies one of the four criteria listed in section 3172(1)).<sup>4</sup> Thus, MCL 500.3172(1) itself recognizes that one must have the proper grounds for seeking or claiming benefits before he or she may obtain PIP benefits through the MACP. In other words, a person that is otherwise ineligible for PIP benefits (e.g., an uninsured owner who is injured in a car accident) is not "entitled" to obtain PIP benefits and is not "entitled" to PIP benefits through the MACP regardless of whether he or she satisfies one of the four criteria listed in section 3172(1). In this case, Plaintiff bears the burden of showing that Mr. Esquivel is "entitled" to benefits under the No-Fault Act, not the MACP. See *Nasser v Auto Club Ins Ass'n*, 435 Mich 33; 457 NW2d 637 (1990). The Court of Appeals erroneously shifted that burden onto the MACP. Moreover, the language included in MCL 500.3172(1) that the Court of Appeals relied upon was clearly not intended to apply to circumstances such as those in this case. (See Application, pp 12-13).

Reading MCL 500.3172(1), 3173, and 3173a together, in accordance with principles of statutory interpretation, makes clear that the MACP must make an initial determination of a

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<sup>4</sup> The fact that, in MCL 500.3172(1), the Legislature parrots the language from MCL 500.3105 makes clear that the Legislature intended MCL 500.3172(1) to apply only to persons who show that they are otherwise "entitled" to PIP benefits under the No-Fault Act. Section 3105 of the Insurance Code establishes an insurer's liability to pay PIP benefits and uses the same language found in MCL 500.3172(1) ("Under personal protection insurance an insurer is liable to pay benefits for *accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle*, subject to the provisions of this chapter.") (emphasis added). Under Plaintiff's reading of MCL 500.3172, this Court would have to read that provision to say "A person entitled to claim benefits *through the MACP*...may obtain [PIP] benefits *through the [MACP]*..." A reading which is circular and nonsensical. The plain language of MCL 500.3172(1) is clear—only a person entitled to claim PIP benefits because of a motor vehicle accident may obtain benefits through the MACP if one of four conditions are met.

claimant's eligibility (which, in turn, may depend on the exclusions and limitations in the No-Fault Act as well as the criteria listed in MCL 500.3172(1)). If the claimant is obviously ineligible, then the MACP must deny the claim. If not, then the MACP would assign the claim to a servicing insurer. Here, Mr. Esquivel's claims is obviously ineligible as he either fails to be eligible under MCL 500.3173 or MCL 500.3172.

Significantly, the fact that Bronson could not "identify" Mr. Esquivel's insurance carrier (if one existed) does not require the MACP to assign the claim. See Application, pp 12-14. Indeed, if true, why would a health provider inquire into an injured party's insurance status, particularly if that party is likely uninsured? Under the Court of Appeals' decision, such a provider could simply pass that responsibility along to the MACP by claiming that they cannot "identify" any applicable insurance. The Court of Appeals' order essentially asks the MACP to do the impossible and prove a negative by assuming the role of investigator when that duty belongs to the Plaintiff (not to mention Plaintiff's counsel who under MCR 2.114(D) must certify, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, that any such claim is well grounded in fact). The fact that a claimant has not fully investigated their claim means that the identity has not yet been discovered – not that the claimant cannot "identify" the insurer, like in a hit and run accident. If anyone needs to take a deposition, it is the claimant here, who is attempting to ride the unclean coattails of Mr. Esquivel in making a claim without the corresponding burden of arming itself with information that Mr. Esquivel would have.

**II. THE COURT OF APPEALS' DECISION IS ALSO CONTRARY TO THE GOALS OF THE NO-FAULT ACT.**

The No-Fault Act, which became law on October 1, 1973, was created in an effort to eradicate problems inherent in the tort liability system, including long payment delays, high legal

costs, and an overburdened court system. See *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978). In short, the goal of the no-fault insurance system was to provide victims of motor vehicle accidents with “assured, adequate, and prompt reparation for certain economic losses.” *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 595; 648 NW2d 591 (2002). The Legislature believed this goal could be most effectively achieved through a system of compulsory insurance, whereby every Michigan motorist would be required to purchase no-fault insurance or be unable to operate a vehicle legally in this state. Under this system, victims of motor vehicle accidents would receive insurance benefits for their injuries as a substitute for their common-law remedy in tort. *Id.*

If the Court of Appeals’ decision stands, it will not only be contrary to the statutory scheme described herein, but also contrary to the goals of the No-Fault Act. Based on the Court of Appeals’ decision here, the lower courts are holding that the MACP may not deny a claim and may not refuse to assign the claim to a servicing insurer. There have been 4 such decisions in the last quarter of 2015 alone, and more are expected. As a practical matter, this has unwound the entire purpose for which the Legislature amended Section 3173a and gave authority to the MACP to deny claims that are obviously ineligible. This does not further the goals of the No-Fault Act generally, nor the evident intent of the Legislature when it amended Section 3173a. No claim can be resolved expeditiously under these circumstances, and depositions will be required for every claim submitted, not matter how worthy. It is difficult to see how the 1984 and 2012 amendments could be further ignored than the interpretation advanced by the Court of Appeals in this case.

#### **CONCLUSION AND REQUEST FOR RELIEF**

The Court of Appeals erred when it found that the MACP could not deny Plaintiff’s claim as “obviously ineligible” because (1) under either of the insurance scenario presented by

this case, Mr. Esquivel was ineligible for benefits through the MACP (in other words, the claim was “obviously ineligible”) and no further factual development was necessary or appropriate, (2) the statutory scheme makes clear that the MACP is not the entity charged with proving entitlement to PIP benefits, and (3) such a result is contrary to the goals of the No-Fault Act.

Despite the Court of Appeals’ erroneous adoption of Plaintiff’s interpretation of MCL 500.3172(1), the statutory language at issue is very clear. After an application for benefits is submitted to the MACP, the MACP must deny any obviously ineligible claim and has no obligation to refer such an ineligible claim to its servicing carriers to make this same determination. MCL 500.3173a. The statute does not somehow lower the standard because a health care provider files the claim. Mr. Esquivel’s claim was clearly ineligible for benefits under the MACP and the MACP properly denied it. The Court of Appeals’ Order is contrary to the relevant statutory language and the Legislature’s intent and cannot stand.

WHEREFORE, Defendant-Appellant Michigan Assigned Claims Plan respectfully requests that this Honorable Court grant its Application for Leave to Appeal and reverse the Court of Appeals’ erroneous decision. In the alternative, MACP requests that this Court peremptorily reverse the decision and instruct the trial court to enter judgment in the MACP’s favor.

Respectfully submitted,

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Dated: January 6, 2016

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