STATE OF MICHIGAN

COURT OF APPEALS

JAWAD A. SHAH, M.D. PC, doing business as INSIGHT HEALING CENTER, doing business as INSIGHT PAIN MANAGEMENT CENTER, doing business as INSIGHT PHYSICAL THERAPY, doing business as INSIGHT NEURO CHIROPRACTIC, INSIGHT HEALTH AND FITNESS, INSIGHT RADIOLOGISTS PC, ALLIANCE ANESTHESIA PLLC, and STERLING ANESTHESIA PLLC,

Plaintiffs-Appellants,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 25, 2021

No. 353298
Genesee Circuit Court
LC No. 17-110093-NF

Before: SWARTZLE, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

According to its preamble, Michigan's Adult Foster Care Licensing Act (AFCLA) is intended to provide for the regulation of adult foster care facilities, and to establish standards of care for the protection of residents. The Legislature charged the Department of Licensing and Regulatory Affairs with administering and enforcing the act. MCL 400.709. In 2014, the department visited plaintiff Insight Healing Center and determined that it was not an adult foster care facility and did not require licensure.

Defendant State Farm insists that the department was wrong, and that Insight met the statutory definition of an adult foster care facility. Therefore, State Farm maintains, Insight operated illegally from 2016 through 2018, when an individual covered by a State Farm no-fault policy resided there. The trial court agreed with State Farm. The services that Insight provided to Michael Stone were not lawfully rendered, the trial court concluded, and therefore not compensable under the no-fault act. See *Cherry v State Farm Mut Auto Ins Co*, 195 Mich App

316, 320; 489 NW2d 788 (1992) ("[O]nly treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit.").

We reverse and remand for further proceedings.

I. UNDERLYING FACTS AND CONTENTIONS

Stone was struck by a vehicle driven by a person insured by State Farm. Seven months later he was admitted to the Insight Healing Center for rehabilitation and therapy. Stone resided at the facility for almost two years. Insight's bill for its services exceeded $787,000.

State Farm resisted payment of this charge on a variety of legal grounds; this is the second case involving these same parties to reach this Court. Here, we focus on the statutory definition of "adult foster care." At the time the services were provided, the term "foster care" was defined in the AFCLA 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." MCL 400.704(7).[1] The parties' disagreement centers on the meaning of the phrase "the provision of."

Insight contends that it did not "provide" Stone with "board," "supervision," or "personal care." The true providers of those services were separate commercial entities and independent contractors, Insight asserts. Some of the entities supplying those services had their own licenses and hired licensed personnel who attended to Stone. Residents were permitted to select their own providers of the services, Insight claims, and Insight did not direct the care that the individual personal care or supervisory providers delivered to Stone. Insight also did not provide Stone with "board"; according to an Insight representative, Stone obtained his meals from outside of the facility, and Insight generally "outsourced" board for its residents.

State Farm did not refute this evidence in the trial court. Instead, State Farm insists that "the utilization of staffing agencies" did not excuse Insight from obeying the licensing requirement set forth in the AFCLA. According to State Farm, "[t]he provision of supervision, personal care, and protection in addition to room and board" under the former MCL 400.704(7) meant that if Insight facilitated or arranged for the provision of the services, it required a license.

II. ANALYSIS

We review de novo a circuit court's ruling on a summary disposition motion and any underlying issues of statutory interpretation. *Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013). In analyzing the language of the AFCLA, we are guided by the principle that the act's words are the most reliable indicator of legislative intent and should be interpreted based on their ordinary meaning, and their context within the statute. *People v Glass*, 288 Mich App 399, 400-401; 794 NW2d 49 (2010). "[T]he words and phrases used . . . must be assigned such

[1] The Legislature amended this definition effective March 28, 2019, 2018 PA 557; the amended language is discussed below.

meanings as are in harmony with the whole of the statute, construed in the light of history and common sense." *Arrowhead Dev Co v Livingston Co Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982). The phrase "the provision of" "does not stand alone" and "should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole." *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003) (cleaned up).[2] "Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context," which requires interpreting courts to refrain from "divorc[ing]" "words and clauses . . . from those which precede and those which follow." *Id*. (cleaned up).

An "adult foster care facility" was defined as an "establishment that provides foster care to adults" and "includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care." MCL 400.703(4).[3] "Establishment[s]" providing adult foster care, as that term is defined in the act, must be licensed. See MCL 400.713(1). As we have stated, during the relevant time period, "foster care" was 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." MCL 400.704(7). Had the department determined that Insight qualified as an adult foster care facility, the department would have been obligated to "notify the owner or operator of the facility that it is required to be licensed under this act." MCL 400.713(12). Insight would then have been required to apply for a license within 30 days or face significant penalties. *Id*.

Reasonably interpreted in context, it makes sense to construe the phrase "the provision of" the same way as did the department and Insight: that licensing was required only if the "establishment" *itself* provided "supervision, personal care, and protection in addition to room and board[.]" By requiring residents to choose their own providers from a menu of suppliers of "supervision," "personal care" and "board," Insight deliberately distanced itself from the responsibility for providing those services. This decision may have been made for Insight's convenience, or to protect itself against liability. "It has been long established in Michigan that a person who hires an independent contractor is not liable for injuries that the contractor negligently causes." *DeShambo v Nielsen*, 471 Mich 27, 31; 684 NW2d 332 (2004). Regardless of the reasons behind Insight's structure, at the time Stone resided there, Insight's business model incorporated the use of independent contractors. No evidence suggests that this was improper.

Indeed, in response to a complaint that Insight was illegally operating an unlicensed facility, a Bureau of Children and Adult Licensing investigator made an unannounced visit to the

[2] This opinion uses the new parenthetical "cleaned up" to improve readability without altering the substance of the quotation. The parenthetical indicates that nonsubstantive clutter such as brackets, alterations, internal quotation marks, and unimportant citations have been omitted from the quotation. See Metzler, *Cleaning Up Quotations*, 18 J App Pract & Process 143 (2017).

[3] The term "establishment" was changed to "home or facility" by 2019 PA 557, effective March 28, 2019.

facility in 2014, and interviewed the facility's director and assistant director.[4] The directors advised the investigator that a year earlier and in response to a similar complaint, Dr. Jawad Shah, Insight's owner, "met with attorneys and restructured the facility so it is not in violation of AFC [adult foster care] rules and regulations." The directors further informed the investigator that Insight intended "to submit a certificate of need and apply to become a skilled nursing facility once the renovations to the physical structure of the facility are complete."

The Insight representatives explained to the investigator that personal care for the residents was performed "by a contracted staffing agency" unaffiliated with Insight or Dr. Shah, and that "each resident has the option of contracting with any staffing agency he/she chooses based on his/her needs as determined by the resident's case manager, the resident, and/or the resident guardian." Similarly, the report of the bureau's inspection reflects that all of the meals provided to residents were "outsourced and catered into the facility by Maxim Catering which is a food vendor." Residents were also advised that they could request that their meals be provided by a different company.

The investigator discussed her findings with the facility's director, informing him (in her words) "that because there is a separation between the entity which owns the property and the entity providing direct care services to residents, the facility does not fall under the authority of Act 218 (Licensing Act) and therefore does not require an adult foster care license at this time." The investigator formally concluded that Insight did not require a license and recommended that the complaint be closed. Apparently, it was.

Viewed in isolation, the phrase "the provision of" in MCL 400.704(7) might be reasonably interpreted to encompass services provided by an independent contractor on behalf of a care institution such as Insight. But the AFCLA regulates "establishments" providing foster care, and in that context it is logical to view "the provision of" to reflect that the care received by a resident would be directly "provided" by the "establishment" rather than by various independent contractors. Similarly, it is reasonable to conclude that "the provision of services" does not embrace a *resident's* selection of service providers, as was Insight's approach. Insight's organizational structure was not similar to that of a "home" where residents enjoyed coordinated services provided by a single owner or "establishment." Rather, Insight's approach was to allow the residents to develop independent relationships with care providers who were not beholden to nor managed by Insight. Arranging for services to be provided is fundamentally different from "providing" the services. Because Insight itself did not provide the services, it fell outside MCL 400.704(7) and did not require licensure.

III. STATUTORY INTERPRETATION, AND DEFERENCE

We find additional support for our holding in the department's conclusion that licensure was unnecessary. We conceded above that in isolation, "the provision of" might include arranging

[4] MCL 400.709(1) provides for such investigative visits as follows: "The department shall administer this act and shall require reports, establish procedures, make inspections, and conduct investigations pursuant to law to enforce the requirements of this act and the rules promulgated under this act."

for others to provide services. But this is not how the department interpreted the statute it is responsible to interpret. As recited above, the department's consultant and her "area manager" concluded that because Insight's ownership of the property was separated from its direct care to the residents, the facility did not need a license.

We generally defer to an agency's administrative expertise in making decisions falling within the agency's wheelhouse, including the agency's conclusions of law. *Dep't of Community Health v Anderson*, 299 Mich App 591, 598; 830 NW2d 814 (2013). An agency's interpretation of a statue "is entitled to respectful consideration[,]" and "cannot conflict with the plain meaning of the statue." *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 108; 754 NW2d 259 (2008).

The "respectful consideration" standard further mandates that an agency's decision "ought not to be overruled without cogent reasons." *Id*. No compelling reasons for overruling the department exist here. That the department's interpretation of the statutory language is correct is reinforced by the Legislature's recent amendment of the statute. In 2019, the Legislature added the italicized language:

> "Foster care" means 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 *provided at a single address. Providing room under a landlord and tenant arrangement does not, by itself, exclude a person from the licensure requirement under this act.*

The added provisos appear to be addressed to facilities like Insight, which contract out essential services. It is now clear that they need to be licensed. And Insight now is.

Insight did not qualify as an adult foster care facility during Stone's stay, however, based on both a reasonable interpretation of the statutory language then in existence and because deference to the department's interpretation is appropriate.

IV. RELIANCE

After the department's visit and its official blessing of the unlicensed facility Insight created, Insight reasonably believed it was operating within the boundaries of the law. "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Landgraf v USI Film Prods*, 511 US 244, 265; 114 S Ct 1483; 128 L Ed 2d 229 (1994). Insight had no notice that its legal status was in jeopardy before this Court undertook a review of the definition of "adult foster care" cases brought by insurance companies seeking to avoid paying no-fault benefits. See, e.g. *Olsen v Allstate Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 20, 2020 (Docket No. 346650). Insight reasonably relied on the department's interpretation of a statute that the department is charged with interpreting and

enforcing.[5] Although retroactivity principles are inapplicable here in a *direct* sense, they indirectly counsel against depriving Insight of its reasonable expectation of payment. Applying legislation retroactively " 'presents problems of unfairness . . . because it can deprive citizens of legitimate expectations and upset settled transactions.' " *Downriver Plaza Group v Southgate*, 444 Mich 656, 666; 513 NW2d 807 (1994), quoting *Gen Motors Corp v Romein*, 503 US 181, 191; 112 S Ct 1105; 117 L Ed 2d 328 (1992). Applying a new interpretation of MCL 400.704(7) divorced from that of the department has precisely the same effect.

The record before us contains no evidence supporting that the services for which Insight billed were unnecessary or unreasonable. On this record, State Farm seeks to avoid paying a substantial bill on the basis of what appears to be nothing more than a contrived construction of a statute in conflict with that of the agency that enforces that very statute. Not only does it conflict; the agency affirmatively advised Insight that it did not need to be licensed.

If the state of Michigan had brought a case against Insight for being unlicensed during the time Stone was a resident (about a year after the inspection), Insight would have a solid equitable estoppel argument. See *Oliphant v State*, 381 Mich 630, 638; 167 NW2d 280 (1969) (cleaned up) ("That the State, as well as individuals, may be estopped by its acts, conduct, silence, and acquiescence, is established by a line of well adjudicated cases as above pointed out by the trial judge."). State Farm seeks a judicial determination that Insight's services were performed illegally—an after-the-fact determination that the enforcement authority of the state likely would not have been empowered to make.

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher

[5] State Farm makes no effort to explain how Insight would even obtain a license after the agency responsible for licensing adult foster care homes officially determined that it did not need one.

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SWARTZLE, J. (*dissenting*).

The Legislature has "intended that only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit." *Cherry v State Farm Mut Auto Ins Co*, 195 Mich App 316, 320; 489 NW2d 788 (1992). "If the treatment was not lawfully rendered, it is not a no-fault benefit and payment for it is not reimburseable." *Id*.

Under the adult-foster act, an "adult foster care facility" is an establishment "that provides foster care to adults." MCL 400.703(4). It is undisputed that, during the time he lived there, Michael Stone was provided with each and every component of adult-foster-care services at plaintiffs' facility: supervision, personal care, protection, and room and board. To provide something means to supply or make it available, and the statutory language is broad enough to encompass the provision of a service via an employee (at the direct direction and control of plaintiff as the employer) or a contractor (at the indirect direction and control of plaintiff through the agreed-upon terms of the contract). Whether via employees or contractors, the care that the patient received amounted to foster care. Because plaintiffs provided adult-foster-care to Stone at its

facility and were not licensed by LARA, I would conclude that the treatment was not lawfully rendered under MCL 500.3157(1), and charges for that treatment are not reimbursable as a no-fault benefit.

Plaintiffs argue that whether their activities require an adult-foster-care license is uniquely within the province of LARA and that this Court lacks authority to review the issue. Although LARA bears responsibility under Michigan's licensing laws to determine whether to pursue legal action against a facility for providing adult-foster-care services without a license under MCL 400.713(1), the Legislature has not given LARA responsibility for determining whether a service is reimbursable under the no-fault act. As defendant points out, this Court has addressed this legal issue on several occasions. See *Life Skills Village, PLLC v Nationwide Mut Fire Ins Co*, 331 Mich App 280; 951 NW2d 724 (2020); *Healing Place at North Med Ctr v Allstate Ins Co*, 277 Mich App 51; 744 NW2d 174 (2007); *Olsen v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2020 (Docket No. 346650); *Kings Home Healthcare, Inc v Allstate Prop & Cas Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2019 (Docket No. 344808); *Jawad A. Shah, M.D., PC v Fremont Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued April 30, 2019 (Docket No. 340441); *Keys of Life v Auto-Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 27, 2016 (Docket No. 328227). Finally, this is not a case where LARA declined to grant an adult-foster-care license to an applicant, but one where LARA decided not to compel plaintiffs to obtain one.

For these reasons, I respectfully dissent.

/s/ Brock A. Swartzle