STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHESTER	)	**FOR THE SIXTH JUDICIAL CIRCUIT**
	)	
Alexis Jones, Plaintiff,	)	**CIVIL ACTION NUMBER: 2020-CP12-00207**
	)	
v.	)	
	)	**FORM 4 ORDER**
Progressive Northern Insurance Co., Defendant.	)	
	)	

This matter came before the court for a bench trial on a breach of contract claim disputing the definition of 'incurred' within the policy. The parties stipulated to the following: Plaintiff was injured in an automobile accident while riding as a passenger in a vehicle insured by the defendant; The policy includes a $10,000 medical payments coverage limit for "reasonable expenses incurred" as a result of an accident; Plaintiff was treated for her injuries with the total medical expenses being in excess of the policy limits; Subsequently, medical providers agreed to accept less than the original amount charged from Medicaid as required by law and/or its agreement; Defendant made payments to Plaintiff for the amount Medicaid paid to satisfy the medical bills.

The issue before the court is whether the Plaintiff "incurred" the full amount charged by her medical providers or the amount her providers got paid by Medicaid. The Defendant and Medicaid do not have contractual relationship. Plaintiff argues she "incurred" the full expense of the bill irrespective of how the expenses were paid by Medicaid and thus the Defendant's failure to reimburse her the expenses "incurred" is a breach of contract. Plaintiff seeks judgment in the amount of $8,676.40, policy limits minus the amount already paid to Medicaid, as well as attorney's fees in the amount of $14,000.

Defendant argues Plaintiff "incurred" only the expenses at the reduced rate and therefore cannot establish a breach of contract claim. Defendant asserts that under *Gordon v. Fidelity Cas. Co. of N.Y.* plaintiff "incurs" no expense above the reduced rates negotiated with the providers, and the insurer has no duty to pay the amounts the insured did not actually pay. 238 S.C. 438, 444, 120 S.E.2d 509, 512 (1961). Additionally, the Defendant points to *Barker v. Washington Nat. Ins. Co.*, a factually similar case, where the Court held that under South Carolina law, the insured was never obligated to pay more than the amount that the hospital has agreed to accept as full payment under Medicare. No. 9:12-CV-1901-PMD, 2013 WL 1767620 (D.S.C. Apr. 24, 2013).

Following the presentation of evidence, the court took this matter under advisement. After further review and deliberation, the court respectfully finds the Plaintiff "incurred" the full amount charged at the time services were rendered and thus became entitled to the full amount of reimbursement coverage under the policy. An insurer's obligation under an insurance policy is defined by the terms of the policy and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 137 (Ct. App. 1990). The terms of the insurance policy must be construed most liberally in favor of the insured and where the words of a policy are ambiguous, or where they are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured. *Pitts v. Glens Falls Indemnity Company*, 222 S.C 133 72 S.E.2d 174 (1952). Here, the term "incurred" is not defined within the policy and both parties have offered reasonable interpretations, therefore the term "incurred" is ambiguous.

The dictionary definition of "incurred" means "[t]o become liable or subject to." *Black's Law Dictionary* 768 (6th Ed. 1990). The Court finds that a patient is responsible for any charges incurred regardless of whether insurance or some other party ultimately pays it or negotiated for a reduced rate. Therefore, Plaintiff incurred the full cost of her medical treatment at the time services was rendered as she became obligated for that amount irrespective of Medicaid. The court finds *Gordon* to be distinguishable from the case at bar. In *Gordon*, the Court found that since the parties to the action stipulated the veteran plaintiff incurred no expenses, made no cash outlay, and there being no obligation on the insured to pay for the hospitalization he received at the Fort Jackson government hospital as the treatment was provided at no cost or expense to him, he 'incurred' no expenses within the meaning of the policy. 238 S.C. at 446. Unlike *Gordon*, the Plaintiff in this case was in fact charged for the services rendered at the time they were rendered thereby incurring those expenses notwithstanding Medicaid. For the same reason, this Court respectfully disagrees with the *Barker* Court and declines to follow.

As to attorney's fees, the court finds the plaintiff is not entitled to such. As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 902 (Ct. App. 2001). Under S.C. Code Ann. §38-59-40, the insurer is liable to pay all reasonable attorney's fees for the prosecution of the case where the trial judge makes a finding "that the refusal was without reasonable cause or in bad faith." The court previously dismissed the bad faith cause of action in this matter finding the insurer denial of the full amount was not in bad faith, and made no finding at trial or in its review of the record that would suggest the refusal was made in bad faith or without reasonable cause. Additionally, a review of the policy shows no inclusion of such a provision entitling the plaintiff to attorney's fee. Therefore, the court respectfully denies the plaintiff's request for attorney's fees.

Plaintiff is entitled to judgement in the amount of $8676.40.

Plaintiff's attorney Mr. Logan Cannon to prepare a more formal order in its proper format.

IT IS SO ORDERED

Chester Common Pleas

Case Caption: Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company

Case Number: 2020CP1200207

Type: Order/Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

STATE OF SOUTH CAROLINA	}	IN THE COURT OF COMMON PLEAS
	}	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	}	
	}	
Alexis Jones and Willie Brown,	}	
	}	Civil Case #: 2020-CP-12-00207
Plaintiffs,	}	
-vs-	}	
	}	**ORDER**
Progressive Northern Insurance Company,	}	
	}	
Defendant.	}	
	}	

This matter was heard by the Court as a bench trial on March 27, 2023. After hearing testimony, reviewing the evidence and hearing the arguments of the parties, the Court submitted a verdict on March 29, 2023 that found for the Plaintiff Alexis Jones on her breach of contract claim. This Order accompanies that verdict pursuant to Rules 52 and 58, SCRCP.

FACTS / BACKGROUND

This action arose out of Progressive's failure to pay Plaintiff Alexis Jones the full $10,000 in medical payments coverage owed to her under Willie Brown's auto policy as a result of an auto accident on October 8, 2019. The policy includes a $10,000.00 medical payments coverage limit for "reasonable expenses incurred for necessary medical services" sustained by an insured as a result of an auto accident. Plaintiff Jones is a listed driver on the policy. As a result of the accident, Plaintiff Jones sought medical care and treatment with total billing that amounted to $27,786.17. Plaintiff Jones submitted a demand to Progressive for full payment of the $10,000.00 medical payment coverage in light of the total medical bill amount.

Progressive was made aware that Plaintiff Jones is a Medicaid recipient. After receiving Plaintiff's demand, Progressive disagreed and only made payment to Plaintiff Jones for the amount Medicaid paid to satisfy the medical bills ($1,323.60) rather than the medical payment coverage limit.

This suit for breach of contract followed the dispute. At trial, Plaintiff sought full payment of the medical payments coverage that was owed under the insurance policy with Defendant Progressive. Defendant Progressive argued that Plaintiff Jones was only entitled to reimbursement for the amount paid by Medicaid. This Court was presented with the issue of determining the amount of reasonable expenses "incurred" by the Plaintiff.

The parties stipulated to facts before trial and no further objections were raised at trial. Plaintiff presented testimony from herself and Willie Jones.

LAW /ANALYSIS

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services was rendered as she became obligated for that amount irrespective of Medicaid. The court finds *Gordon* to be distinguishable from the case at bar. In *Gordon*, the Court found that since the parties to the action stipulated the veteran plaintiff incurred no expenses, made no cash outlay, and there being no obligation on the insured to pay for the hospitalization he received at the Fort Jackson government hospital as the treatment was provided at no cost or expense to him, he 'incurred' no expenses within the meaning of the policy. 238 S.C. at 446. Unlike *Gordon*, the Plaintiff in this case was in fact charged for the services rendered at the time they were rendered thereby incurring those expenses notwithstanding Medicaid. For the same reason, this Court respectfully disagrees with the *Barker* Court and declines to follow.

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CONCLUSION

Based on the foregoing analysis, this Court finds that the Defendant Progressive Northern Insurance Company owed a contractual obligation to Plaintiff Jones, that Progressive Northern

Insurance Company breached that contract, and that Plaintiff experienced damages as a proximate cause of said breach.

THEREFORE, this Court hereby finds for the Plaintiff as stated on the verdict that has been filed and orders that a judgment be entered in the amount of **$8,676.40** against the Defendant.

IT IS SO ORDERED.

April __, 2023
Chester, South Carolina

Judge Brian M. Gibbons
Sixth Judicial Circuit

Chester Common Pleas

Case Caption: Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company

Case Number: 2020CP1200207

Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge