

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 21, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 98-0473**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**JILL WINNEGA,**

**PLAINTIFF-RESPONDENT,**

**v.**

**NORTH CENTRAL HEALTH PROTECTION PLAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Langlade County:  
JAMES P. JANSEN, Judge. *Affirmed.*

HOOVER, J. North Central Health Protection Plan (NCHPP) appeals a judgment that awards its insured, Jill Winnega, reimbursement for the cost of a wig, or cranial prosthesis, prescribed by her physician. NCHPP argues that the trial court erroneously found coverage by relying upon a legal proposition

unknown to Wisconsin law rather than upon the policy language.<sup>1</sup> NCHPP contends that its policy does not provide coverage for the hairpiece because it is cosmetic rather than medically necessary, and was merely prescribed for Winnega's convenience. This court concludes that the evidence sustains the trial court's implicit finding that the hairpiece was medically necessary under the applicable policy definition and the trial court's judgment is therefore affirmed.<sup>2</sup>

### STATEMENT OF FACTS

The following evidence was uncontradicted at trial. The NCHPP policy in question provides coverage for services that are authorized by a doctor and necessary for treatment of an illness. Jill Winnega suffers from alopecia universalis, which describes the condition of total absence of body hair. There is no known cure or applicable treatment. When Winnega first noticed patchy hair loss, she consulted with her family physician, Theodore Fox, who tentatively diagnosed a form of alopecia. She then saw a dermatologist who confirmed the diagnosis and prescribed cortisone injections. Eventually Winnega lost all of her hair at which point Fox arrived at the diagnosis of alopecia universalis. He prescribed what is variously referred to in the record as a wig or a cranial

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<sup>1</sup> This court agrees with NCHPP that the case is controlled by the policy language rather than upon the trial court's view, unsupported by citation, that the law requires an insurance company to be responsible for that which a doctor prescribes. We may, however, affirm a circuit court's decision even if the trial court reached its result for different reasons. *Lecander v. Billmeyer*, 171 Wis.2d 593, 602, 492 N.W.2d 167, 171 (Ct. App. 1992). Except in the instance of a discretionary determination, which is not before us, an appellate court is concerned with the correctness of the trial court's decision rather than with the trial court's reasoning. *State v. Baudhuin*, 141 Wis.2d 642, 648, 416 N.W.2d 60, 62 (1987).

<sup>2</sup> NCHPP also maintains that the hairpiece constitutes custodial care rather than covered durable medical equipment and the policy does not provide for preventative care. These arguments hold potential for merit only where the prescribed medical supply is not necessary for the treatment of an illness. In light of this court's holding on the primary issue, we need not address them.

prosthesis.<sup>3</sup> Winnega filled the prescription and submitted a claim therefor to NCHPP. NCHPP denied the claim, and Winnega instituted a small claims action to recover the cost of the prosthesis.

Fox testified at trial that he prescribed the hairpiece so that Winnega could return to her employment without having to wear a covering on her head. By prescribing a cranial prosthesis, he was not treating the cause of the hair loss, but was attempting to eliminate the anxiety Winnega experienced over her hair loss. Thus, he testified, to the extent the prescription relieved her anxiety when encountering people, it fulfilled a therapeutic medical as well as cosmetic purpose. Fox considered the prescribed hairpiece to be necessary for Winnega's treatment rather than merely a convenience for her.

NCHPP called one of its claims specialists to offer its explanation as to why the language of the policy excluded coverage. NCHPP did not call an expert to rebut Fox's implicit diagnosis that Winnega was experiencing anxiety. Nor did its claims specialist assert that anxiety does not constitute or exacerbate an illness or that the policy does not provide coverage for such a condition.

### STANDARD OF REVIEW

NCHPP asserts that this case involves the application of undisputed facts to the language of the insurance policy and therefore entails a de novo review. See *Lambert v. Wrensch*, 135 Wis.2d 105, 115, 399 N.W.2d 369, 373-74 (1987). It is true, of course, that the policy's language must be considered in

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<sup>3</sup> Mike Leonard, owner of the hair salon from which Winnega obtained the hairpiece, testified that a cranial prosthesis is different from a wig because the former is designed to replace hair after chemotherapy or experiencing alopecia, while the latter is a fashion accessory designed to be worn over hair.

ultimately resolving the controversy. This court, however, views the essential dispute as involving a question of fact rather than policy interpretation.<sup>4</sup> Specifically, the issue whether the prescription for a hairpiece was medically *necessary* as that term is, at least under the circumstances of this case, unambiguously defined in the policy or exclusively for cosmetic purposes is a question of fact. *See Neese v. State Med. Soc'y*, 36 Wis.2d 497, 508, 153 N.W.2d 552, 558 (1967) (what is reasonably necessary under the existing circumstances is a question of fact); *see also Forsberg Paper Box Co. v. Wisconsin DOT*, 14 Wis.2d 93, 100, 109 N.W.2d 457, 461 (1961) (whether travel expenses were ordinary and necessary presents a question of fact). Findings of fact will not be upset on appeal unless they are clearly erroneous. Section 805.17(2), STATS.

### ANALYSIS

An exclusion to the policy in question provides that “[t]he contract does not apply to: (K) Services which are not ordered by a Doctor or are not Medically Necessary for treatment.” NCHPP first argues that the prosthesis does not meet the definition of “Medically Necessary” and is therefore excluded from coverage. Medically necessary services or supplies are defined as:

- (A) Required for the diagnosis or treatment of the Illness or symptoms;
- (B) Provided for the diagnosis or direct care and treatment of the Illness;
- (C) Within the standards of normal medical practice;

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<sup>4</sup> NCHPP’s central contention is that the hairpiece is not medically necessary because it was not prescribed to treat the condition of alopecia. NCHPP does not develop an argument, however, that the policy can be construed such that a prescription meets the definition of medical necessity only if it relates to an underlying medical condition rather than to another illness precipitated by the first.

(D) Not primarily for the convenience of the Participant or any provider; and

(E) A supply or level of services required to provide safe and adequate care.

NCHPP contends on appeal as it did at trial that the hairpiece does not fall within the definition of medical necessity because it does not treat the alopecia, but merely cosmetically conceals Winnega's hair loss. This position ignores the undisputed evidence that Fox prescribed the prosthesis to treat his patient's anxiety. In the physician's view, the prescription fulfilled a therapeutic medical as well as a cosmetic purpose.<sup>5</sup> The trial court embraced this opinion, implicitly finding that the hairpiece was medically necessary<sup>6</sup> and specifically finding that the hairpiece was prescribed "as part of her overall health function." Given the absence of any countervailing evidence, it can hardly be contended that the trial court's finding in this regard was clearly erroneous.

NCHPP alternatively argues that the wig is provided primarily for Winnega's convenience. It views Fox's testimony that Winnega would feel more comfortable dealing with people in her place of employment and therefore remain employed as supporting this conclusion. The proposed inference, however, is one that may be drawn from this evidence only if viewed in a vacuum. In any event, it is not the inference the trial court drew, as the aforementioned finding demonstrates.

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<sup>5</sup> NCHPP does not claim that the policy excludes coverage in the event a prescribed medical supply serves a treatment objective merely because it also has a cosmetic effect.

<sup>6</sup> "The defendant takes the position that because there is no cure for the illness that is known that the wig was cosmetic in nature only and it was not necessary for her medical condition.... [The doctor] felt it was necessary and [t]he defendant should not be second[-]guessing the doctors on matters such as this ...."

The drawing of an inference on undisputed facts when more than one inference is possible is a finding of fact which is binding upon an appellate court. It is not within the province of ... any appellate court to choose not to accept an inference drawn by a factfinder when the inference drawn is a reasonable one.

*State v. Friday*, 147 Wis.2d 359, 370-71, 434 N.W.2d 85, 89 (1989). The trial court's finding that the prescription was issued to promote her health, presumably by treating her anxiety, was reasonable in that it mirrored Fox's uncontroverted testimony. We therefore decline NCHPP's invitation to accept an inference inconsistent with the trial court's finding.

This court holds that the trial court's implicit finding that the hairpiece prescribed by Fox was medically necessary was supported by the evidence adduced at trial. The trial court's judgment is therefore affirmed.

*By the Court.*—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

