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IN THE COURT OF APPEALS OF INDIANA

The Lincoln National Life Insurance Company,
Appellant-Plaintiff,

v.

Beverly M. Kennedy,
Appellee-Defendant.

March 31, 2021

Court of Appeals Case No. 20A-PL-837

Appeal from the Washington Circuit Court

The Honorable Larry W. Medlock, Judge

Trial Court Cause No. 88C01-1411-PL-652

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Lincoln National Life Insurance Company (Lincoln National), appeals the trial court's partial grant of summary judgment in favor

of Appellee-Defendant, Beverly Kennedy (Kennedy), on its complaint for declaratory judgment pertaining to a group long-term disability benefits policy (Policy) it issued. Kennedy cross-appeals the trial court's grant of partial summary judgment in favor of Lincoln National.[1]

[2] We affirm in part, reverse in part, and enter full summary judgment for Lincoln National.

ISSUES

[3] Lincoln National presents the court with one issue, which we restate as the following two:

> (1) Whether the Policy's Discretionary Clause dictates that we review Lincoln National's interpretation of the Policy only for reasonableness; and
>
> (2) Whether the Policy's language which permits it to offset Kennedy's Policy benefits by the social security disability benefits (SSDBs) for which she "is eligible" includes any amounts deducted from her SSDBs for her Medicare Part B premiums.

[4] On cross-appeal, Kennedy presents the court with three issues, which we restate as:

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[1] We conducted a virtual oral argument in this case on February 24, 2021. We thank counsel for their advocacy and presentations.

(1) Whether Lincoln National may offset Kennedy's SSDBs because they are the result of the "same Disability" for which she received Policy benefits, as required by the Policy;

(2) Whether Kennedy's Medicare Part B premiums fall under an exception from offset under the Policy; and

(3) Whether the trial court abused its discretion when it ordered that any reimbursement to Lincoln National from Kennedy for overpayment of benefits would be subject to accrued interest at 12% compounded annually.

FACTS AND PROCEDURAL HISTORY

[5] Lincoln National is a purveyor of group long-term disability (LTD) benefits insurance, and it issued the Policy. Kennedy received the Policy as part of her compensation from her former employer, the University of Louisville. The Policy is not governed by the Employee Retirement Income Security Act (ERISA). The Policy contains a choice-of-law provision that Kentucky state law governs.

[6] In September of 2010, Kennedy was unable to work full-time due to several medical conditions, including COPD, fibromyalgia, and back issues. By December of 2010, Kennedy was unable to work at all. In December of 2010, Kennedy applied for LTD benefits under the Policy. Lincoln National initially denied her claim, whereupon Kennedy filed suit in Kentucky in the Jefferson County Circuit Court. After Kennedy initiated litigation, Lincoln National reversed its denial, began paying Kennedy $2,322 in monthly Policy benefits on June 2, 2011, and settled Kennedy's suit. Kennedy's Policy disability date is

December 2, 2010, and, under the Policy's elimination period, she was required to be continuously disabled for 180 days before benefits were paid. From June 2, 2011, to June 2, 2013, Lincoln National paid Kennedy benefits under the Policy's Total Disability 'own occupation' disability period, wherein an insured is found to be unable to perform each of the main duties of her own occupation.

[7] Kennedy also applied for and received SSDBs from the Social Security Administration (SSA), which found her to be disabled as of September 21, 2010. Her initial, gross SSBDs award was $1,964. However, Kennedy's Medicare Part B insurance premiums were deducted from her SSDBs, reducing the amount she actually received in SSDBs per month. Kennedy also received a retroactive SSDBs award of $25,914.

[8] On December 23, 2013, Lincoln National notified Kennedy by letter that it had determined that Kennedy was totally disabled as of June 2, 2013, under the Policy's 'any occupation' provision, wherein an insured is found to be unable to perform each of the main duties of any occupation. In addition, relying on Policy provisions, Lincoln National notified Kennedy that it sought to offset/reduce her 'any occupation' Policy monthly benefits by the amount of her SSDBs as of June 2, 2013. To that end, Lincoln National corresponded with Kennedy's attorney, requesting a copy of Kennedy's complete SSDBs award and again notifying her of its intention to offset. Kennedy refused to provide Lincoln National with information pertaining to her SSDBs award.

[9] After paying Kennedy full Policy benefits for over three years, on November 11, 2014, Lincoln National filed the instant suit in the Circuit Court of Washington County, Indiana, where Kennedy resided. Lincoln National sought declaratory judgment to determine its offset right as of June 2, 2013, and to compel Kennedy to provide information pertaining to her SSDBs award. In January 2015, Kennedy provided her SSDBs award letter to Lincoln National. On February 2, 2015, Lincoln National exercised its right under the Policy to offset an estimated SSDBs amount from Kennedy's Policy benefits. On March 6, 2015, Kennedy filed an answer to Lincoln National's complaint for declaratory judgment as well as counterclaims on behalf of herself and a putative class, raising breach of contract and tort claims.[2]

[10] On July 28, 2016, Lincoln National moved for summary judgment on its complaint and Kennedy's counterclaims. In support of its motion, Lincoln National filed the Affidavit of its Director of Risk, Thomas Vargo (Vargo). Attached to Vargo's Affidavit were, among other exhibits, a copy of the Policy, copies of correspondence between the parties, and copies of documents related to Kennedy's SSDBs award. Following the filing of the motion for summary judgment, Kennedy twice deposed Vargo. On August 7, 2019, Kennedy filed her opposition to Lincoln National's motion for summary judgment in which she requested that summary judgment be entered on her contract

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[2] Lincoln National has removed Kennedy's class action to the Southern District of Indiana. *Kennedy v. Lincoln Nat'l Life Ins. Co.*, No. 4:15-cv-99 (S.D. Ind.). That matter has been administratively stayed pending the resolution of this case.

counterclaims. On August 28, 2019, the trial court held a hearing on Lincoln National's summary judgment motion.

[11] On October 18, 2019, the trial court granted partial summary judgment to each party, concluding that Lincoln National was entitled to offset Kennedy's SSDBs from her Policy benefits because she was awarded both benefits for the "'same Disability,'" as required by the Policy. (Appellant's App. Vol. II, p. 132). However, it ruled in favor of Kennedy that the Policy was ambiguous regarding the amount of the offset and strictly construed that ambiguity against Lincoln National to hold that it was only entitled to offset the amount of Kennedy's SSDBs after her Medicare Part B insurance premiums had been deducted. The trial court further ordered that any reimbursement to Kennedy from Lincoln National would be subject to accrued interest at 12%, compounded annually. On November 18, 2019, Lincoln National filed a motion to correct error, and Kennedy filed a motion to reconsider. On March 9, 2020, the trial court entered an amended order on summary judgment which was materially the same as its October 18, 2019, order apart from directing that any reimbursement to Lincoln National from Kennedy would also be subject to 12% annual interest. On April 22, 2020, the trial court stayed proceedings, including Kennedy's request for class certification, until the resolution of this appeal.

[12] Lincoln National now appeals, and Kennedy now cross-appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

A. *Indiana's Summary Judgment Standard of Review*

[13] This appeal follows the trial court's grant of partial summary judgment in favor of each party. The Policy's choice-of-law provision provides that the instant matter is subject to the law of Kentucky. However, because Lincoln National filed its complaint in Indiana, the court will apply the procedural law of this state. *See R.P. Leasing, LLC v. Chem. Bank*, 47 N.E.3d 1211, 1217 n.6 (Ind. Ct. App. 2015) (applying Indiana's standard of review for summary judgment proceedings in the appeal of an Indiana foreclosure action on a promissory note containing a Michigan choice-of-law provision). Thus, the court will review this matter under Indiana's summary judgment standard, which provides that summary judgment is appropriate if the designated evidence "shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). The court reviews both the grant or denial of summary judgment *de novo* and applies the same standard as the trial court. *Kerr v. City of South Bend*, 48 N.E.3d 348, 352 (Ind. Ct. App. 2015). The party moving for summary judgment bears the initial burden of making a *prima facie* showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Sargent v. State*, 27 N.E.3d 729, 731 (Ind. 2015). "Summary judgment is improper if the movant fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material

fact." *Id.* at 731-32. "All disputed facts and doubts as to the existence of material facts must be resolved in favor of the non-moving party." *Kerr*, 48 N.E.3d at 352.

[14] In addition, we note that the trial court entered findings of fact and conclusions thereon in support of its judgment. Special findings are not required in summary judgment proceedings and are not binding on appeal. *AutoXchange.com. Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 48 (Ind. Ct. App. 2004). However, such findings offer this court valuable insight into the trial court's rationale for its review and facilitate appellate review. *Id.*

B. *Discretionary Clause*

[15] As an initial matter, we address whether the Policy's Discretionary Clause alters our standard of review. The Policy provides as follows:

> **COMPANY'S DISCRETIONARY AUTHORITY.** Except for the functions that this Policy clearly reserves to the Policyholder or Employer, the Company has the authority to manage this Policy, interpret its provisions, administer claims and resolve questions arising under it. The Company's authority includes (but is not limited to) the right to:
>
> l. establish administrative procedures, determine eligibility and resolve claims questions;
> 2. determine what information the Company reasonably requires to make such decisions; and
> 3. resolve all matters when an internal claim review is requested.
>
> Any decision the Company makes in the exercise of its authority shall be conclusive and binding; subject to the Insured

> Employee's rights to request a state insurance department review or to bring legal action.

(Appellant's App. Vol. II, p. 57). Relying primarily on federal jurisprudence reviewing benefit determinations by the administrators of ERISA-based plans, Lincoln National argues that the Discretionary Clause mandates that the court will review its interpretation of the Policy only for reasonableness under an arbitrary and capricious standard. *See, e.g., Frazier v. Life Ins. Co. of N. America*, 725 F.3d 560, 566 (6th Cir. 2013) (applying an arbitrary and capricious review to a dispute involving an ERISA-governed long-term disability benefits plan). Kennedy argues that the Discretionary Clause does not apply to this non-ERISA-based plan dispute and that the court should review the matter *de novo*.

[16] The Supreme Court of Kentucky has yet to address the issue of the standard of review applicable to benefit determinations made pursuant to non-ERISA benefits plans. However, we need not address the issue, as even under a *de novo* standard of review, we find the relevant Policy terms to be unambiguous.

II. *Same Disability*

[17] Although presented on cross-appeal by Kennedy, we choose to address this issue first, as it is a threshold matter the resolution of which dictates whether we reach other issues presented on appeal. Kennedy contends that the trial court erred when it summarily concluded that Lincoln National could offset her SSDBs from her Policy benefits because it had concluded that she received both benefits for the 'same Disability,' as required by the Policy. Resolution of the

issue requires an examination of the Policy, and, in light of the Policy's choice-of-law provision, resort to the substantive insurance contract law of Kentucky.

A. *Kentucky Insurance Contract Law*

[18] It is well-established that "in the absence of ambiguities or of a statute to the contrary, the terms of an insurance policy will be enforced as drawn." *Pryor v. Colony Ins.*, 414 S.W.3d 424, 430 (Ky. Ct. App. 2013), *rev. denied*. Therefore, the construction of a contract of insurance begins with the text of the policy. *Id*. We will give the language used in a written insurance policy its plain meaning unless terms used are otherwise defined within the policy. *American Mining Ins. Co. v. Peters Farms, LLC*, 557 S.W.3d 293, 296 (Ky. 2018). We will resort to the cannons of contract interpretation only where ambiguity exists. *See*, *e.g.*, *True v. Raines*, 99 S.W.3d 439, 443 (Ky. 2003) (declining to apply the interpretative doctrine of 'reasonable expectation' to an UIM benefits policy dispute because the policy was unambiguous). Ambiguity may either appear on the face of a policy or when a provision is applied to a particular claim, and it exists where a policy is susceptible to two reasonable interpretations. *St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc.*, 870 S.W.2d 223, 227 (Ky. 1994). Although a rule of strict construction has been used in many cases involving insurance companies, not every doubt must be resolved against the insurer, and a "nonexistent ambiguity should not be used to resolve a policy against a company nor should courts rewrite an insurance contract to enlarge the risk to the insurer." *Pryor*, 414 S.W.3d at 430. When no ambiguity exists in a contract's terms, "we look only as far as the four corners of the document to

determine the parties' intentions." *Maze v. Bd. of Dirs. for the Commonwealth Postsecondary Educ. Prepaid Tuition Trust Fund*, 559 S.W. 3d 354, 363 (Ky. 2018).

B. *Policy Provisions*

[19] The Policy provides that an insured's monthly benefit amount is offset/reduced by the recipient's Other Income Benefits (OIB), including SSDBs, as follows:

> **OTHER INCOME BENEFITS** means benefits, awards, settlements or Earnings from the following sources. These amounts will be offset, in determining the amount of the Insured Employee's Monthly Benefit. Except for Retirement Benefits and Earnings, these amounts must result from the *same Disability* for which a Monthly Benefit is payable under this Policy.

(Appellant's App. Vol. II, p. 68) (emphasis added). 'Disability', as relevant to this appeal, is defined thusly:

> **TOTAL DISABILITY** or **TOTALLY DISABLED** will be defined as follows:
>
> 1. During the Elimination Period and Own Occupation Period, it means that due to an Injury or Sickness the Insured Employee is unable to perform each of the Main Duties of his or her Own Occupation.
>
> 2. After the Own Occupation Period, it means that due to an Injury or Sickness the Insured Employee is unable to perform each of the Main Duties of any occupation which his or her training, education or experience will reasonably allow.

(Appellant's App. Vol. II, p. 51). 'Sickness' is further defined as "illness, pregnancy or disease." (Appellant's App. Vol. II, p. 50). It is not disputed that SSDBs qualify as an OIB under the Policy or that the Policy permits Lincoln National to offset SSDBs if they result from the 'same Disability' for which the insured receives Policy benefits. The dispute is whether Kennedy received her SSDBs and Policy benefits for the 'same Disability.'

C. *Analysis*

[20] Although both parties contend that the relevant Policy provisions are either unambiguous or ambiguous, neither party has identified any true ambiguity in the Policy, latent or otherwise. The simple fact that the parties have advocated for different constructions of a policy or that one party claims a policy is ambiguous does not render it so. *Kentucky Ass'n of Cntys. All Lines Fund Trust v. McClendon*, 157 S.W.3d 626, 634 (Ky. 2005). We do not find the Policy to be ambiguous, and therefore, we will discern the parties' intent from its four corners. *See Maze*, 559 S.W. 3d at 363. Our plain reading of the Policy's definition of 'Disability' together with the offset provision leads us to conclude that the gravamen of these provisions is a disabling condition, *i.e.*, "illness, pregnancy or disease," which must be the same in order to come within the Policy's offset provision. (Appellant's App. Vol. II, p. 50).

[21] Here, Lincoln National designated its Abilities Form which was completed by Kennedy's physician as part of her application for Policy benefits and upon which it based the Policy benefit award. The Abilities Form indicated that Kennedy suffered from COPD with emphysema, severe fibromyalgia, and

mechanical back pain, among other conditions. Lincoln National also designated Kennedy's SSA decision awarding her SSBDs based upon its conclusion that she suffered from severe fibromyalgia, degenerative disc disease, and COPD. Given the parity of these conditions which formed the bases for the respective benefits determinations, Lincoln National demonstrated that no genuine issue of material fact existed regarding whether both benefits were awarded for the 'same Disability,' as required by the Policy. *See Sargent*, 27 N.E.3d at 731. As Kennedy did not designate any evidence creating a dispute, we conclude that Lincoln National was entitled to summary judgment as a matter of law. *Id*. at 731-32.

[22] In addition, we note that 'same Disability' means the same periods of time that an insured is unable to work due to illness or injury, and it is the insured's inability to work that triggers the need and justification for benefits. We draw this conclusion in part based upon the text of the Policy. Both the Policy's 'own occupation' and 'any occupation' Total Disability provisions are placed within the context of periods of time: "1. During the Elimination Period and Own Occupation Period, it means . . ." and "2. After the Own Occupation Period, it means . . ." (Appellant's App. Vol. II, p. 51). In addition, the essence of an insurance contract for LTD benefits is not that the insured has a serious medical or mental condition; rather, it is the insured's inability to work which triggers the need and justification for benefits.

[23] Here, it is undisputed that Kennedy has been unable to work at all since December of 2010. Regardless of the different technical criteria utilized for

evaluating Kennedy's disability, Kennedy's SSA and Policy benefits were awarded for concurrent periods of time during which she was unable to work due to her various medical conditions. We conclude that Kennedy's SSA and Policy benefits were the result of the 'same Disability' as required by the policy and that Lincoln National was entitled to summary judgment.

[24] Kennedy argues that she is entitled to summary judgment because the SSA does not define 'Disability' in the same manner as Lincoln National, such that she could not have qualified for SSDBs for the 'same Disability' as required by the Policy. However, nothing in the language of the Policy itself requires that the SSA and the Policy have the same eligibility criteria in order for SSDBs to qualify as OIB for purposes of offset. Furthermore, it has long been a tenet of Kentucky's insurance jurisprudence that, if possible, we are to construe the terms of a contract of insurance to give effect to each. *Henry Clay Fire Ins. Co. v. Crider*, 229 S.W. 128, 129 (Ky. Ct. App. 1921). If this court were to credit Kennedy's theory, it would render the OIB provision pertaining to SSDBs superfluous, for that type of benefit would never qualify for offset, as the SSA and Lincoln National indisputably have different technical criteria for evaluating disability. Therefore, we affirm the trial court's grant of summary judgment to Lincoln National.

III. *Amount of Offset*

[25] Having concluded that Lincoln National may offset Kennedy's SSDBs under the terms of the Policy, we address Lincoln National's contention that the trial court erred when it determined that the Policy's offset provision was

ambiguous, construed that ambiguity in favor of Kennedy, and concluded that Lincoln National is only entitled to offset the amount she actually receives from the SSA after her Medicare Part B premium is deducted. The resolution of this issue turns on the meaning of the term 'is eligible' as used in the Policy.

A. *Policy Provision*

[26] As noted above, the Policy provides that Lincoln National may offset OIBs, which are defined in relevant part as:

> **Social Security and other Government Retirement Plans.** The following Social Security or other Government Retirement Plan benefits will be offset:
>
> 1. **disability benefits** for which the Insured Employee *is eligible*; and for which any spouse or child *is eligible*, because of the Insured Employee's Disability. . .

(Appellant's App. Vol. II, p. 68) (italicized emphases added).

B. *Analysis*

[27] Lincoln National argues that 'is eligible' is unambiguous and that the court should apply its plain meaning. Kennedy contends that the term is ambiguous and that ambiguities, especially those involving exclusions or benefits limitations, are construed strictly against the insurer and in favor of coverage under Kentucky law. *See*, *e.g.*, *Eyler v. Nationwide Mut. Fire Ins. Co.*, 824 S.W.2d 855, 859-60 (Ky. 1992) (holding that policy limitations are "narrowly interpreted and all questions resolved in favor of the insured."). However,

Kennedy has not identified, either in her written submissions to the court or at oral argument, any ambiguity in the term 'is eligible.'

[28] We do not find the term to be ambiguous, and, therefore, we will apply its plain and ordinary meaning. *American Mining Ins. Co.*, 557 S.W.3d at 296. We may refer to dictionaries to aid our effort. *See*, *e.g.*, *Sutton v. Shelter Mut. Ins. Co.*, 971 S.W.2d 807, 808 (Ky. Ct. App. 1997) (relying on dictionary definitions of the term 'household' to discern its plain meaning as used in an insurance contract), *rev. denied*. 'Eligible' may be defined as "[f]it and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status." *Black's Law Dictionary* (11th ed. 2019). It may also be defined as "having the necessary qualities or satisfying the necessary conditions[.]" *Cambridge Dictionary* (online ed.). It is undisputed that Kennedy is legally qualified, and has satisfied the necessary conditions, to receive the gross amount of her SSDBs benefit. Indeed, this gross amount constitutes the available funds from which the SSA deducts her Medicare premium. Therefore, Lincoln National is entitled to offset the gross amount of Kennedy's SSDBs award. Our conclusion is buttressed by at least two federal court decisions holding that similarly-worded provisions permitted the offset of gross, not net benefits. *See Troiano v. Aetna Life Ins. Co.*, 844 F.3d 35, 42-43 (1st Cir. 2016) (applying the plain language of the policy under a *de novo* standard of review and holding that "payable" meant the full amount of SSDBs for which Troiano was eligible, not whatever was left over after she paid her income tax); *see also Parke v. First Reliance Standard Life Ins. Co.*, 368 F.3d 999, 1005-06 (8th Cir. 2004) (holding that offset of SSDBs that

the "Insured is eligible to receive" meant the gross SSDBs amount because Parke was eligible to receive the full pre-tax amount each month).

[29] In reaching our conclusion, we also observe that it is an axiom of insurance contract construction that, in discerning the intent of the parties, we consider not only what the policy at issue says, but also what it does not say. *See Kemper Nat. Ins. Cos. v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869, 875 (Ky. 2002) ("[A]n insurance contract must be construed without disregarding or inserting words or clauses[.]"). In addition, as a reviewing court, we "cannot enlarge coverage or make new contracts under the guise of construction, but must determine the parties' responsibilities according to the contract terms." *Kentucky Ass'n of Cntys. All Lines Fund Trust*, 157 S.W.3d at 633. The Policy does not mention Medicare premiums as affecting benefits for which an insured is eligible for purposes of offset, nor is it listed as an exception to the offset provision, as set forth more fully below. If we were to accept Kennedy's theory of the Policy, we would impermissibly create a new contract between the parties which would, in effect, force Lincoln National to subsidize Kennedy's Medicare coverage. This we cannot do.

[30] Kennedy's main argument on this point relies on extrinsic evidence of various correspondence between the parties, filings, and portions of Vargo's deposition testimony which she contends constituted binding admissions by Lincoln National that it may only offset her net, not gross, SSDBs award. However, Kennedy's arguments miss the mark, as we would only consider evidence extrinsic to the Policy at issue if we were interpreting an ambiguous term. *See*

True, 99 S.W.3d at 443; *Maze*, 559 S.W.3d at 363. As we have found the term 'is eligible' to be unambiguous, extrinsic evidence is irrelevant to our analysis. Given the plain and ordinary meaning of the term 'is eligible,' we conclude that Lincoln National is entitled to offset the gross amount of Kennedy's SSDBs, not the net amount she receives after her Medicare Part B premium is deducted. Therefore, we reverse the trial court and enter summary judgment for Lincoln National.

IV. *Medicare Premium as Exception to Offset*

[31] Kennedy also contends that her Medicare premium falls under an exception to the Policy's offset provision, and, thus, Lincoln National is not authorized to include the amount of her premium in its offset of her SSDBs award.

A. *Policy Provision*

[32] The Policy enumerates the following exceptions to its offset provision:

> **Exceptions.** The following will **not** be considered Other Income Benefits, and will not be offset in determining the Monthly Benefit:
>
> 1. a cost-of-living increase in any Other Income Benefit (except Earnings); if it takes effect after the first offset for that benefit during a period of Disability;
>
> 2. reimbursement for hospital, medical or surgical expense;
>
> 3. reimbursement for attorney fees and other reasonable costs of claiming Other Income Benefits;
>
> 4. group credit or mortgage disability insurance benefits;

> 5. early retirement benefits that are not elected or received under the federal Social Security Act or other Government Retirement Plan;
>
> 6. any amounts under the Employer's Retirement Plan that:
> a. represent the Insured Employee's contributions; or
> b. are received upon termination of employment without being disabled or retired;
>
> 7. benefits from a 401(k), profit-sharing or thrift plan; an individual retirement account (IRA); a tax sheltered annuity (TSA); a stock ownership plan; or a non-qualified plan of deferred compensation;
>
> 8. vacation pay, holiday pay, or severance pay; or
>
> 9. disability income benefits under any individual policy, association group plan, franchise plan, or auto liability insurance policy (except no fault auto insurance).

(Appellant's App. Vol. II, p. 69). It is the second of these exceptions, that pertaining to "reimbursement for hospital, medical or surgical expense" which Kennedy argues excludes her Medicare premium from offset.

B. *Analysis*

[33] As we have done with other provisions of the Policy, our first task is to examine the terms used in the Policy to determine if they are ambiguous. We observe that the Policy's list of exceptions does not expressly include Medicare premiums. We also observe that for a form of income to fall within the purview of the exception proffered by Kennedy, it must be a 'reimbursement.' However, Kennedy does not even attempt to argue that the term 'reimbursement' is

ambiguous, and, again, we do not find it to be so. Therefore, we will apply the plain and ordinary meaning of the word. *See American Mining Ins. Co.*, 557 S.W.3d at 296. A 'reimbursement' is defined as a "repayment." *Black's Law Dictionary* (11th ed.). A Medicare premium is a payment made by the insured for insurance coverage, not a reimbursement of any kind. Therefore, a Medicare premium is not an exception under the plain meaning of the Policy and is properly subject to offset.

[34] In arguing otherwise, Kennedy again directs our attention to portions of Vargo's deposition testimony which she contends constituted admissions by Lincoln National and which allegedly support her position. However, as noted above, these arguments are not persuasive when the terms of an insurance contract are unambiguous because we determine the intent of the parties within the four corners of the contract. *See Maze*, 559 S.W.3d at 363. As such, we conclude that Kennedy's Medicare Part B premium does not fall within an exception to offset.

V. *Reimbursement and Interest*

[35] Kennedy lastly asserts that the trial court abused its discretion when it ordered that Lincoln National was intitled to collect any overpayment of benefits from her and that the "unreimbursed overpayment will be subject to accrued interest at 12% compounded annually." (Appellant's App. Vol. II, p. 29). Kennedy argues that this was error on the part of the trial court because Lincoln National did not specifically request reimbursement or interest in its complaint, and she argues that the award was premature because she was not provided an

opportunity to present certain affirmative defenses to damages available to her, which she proceeds to detail. We will apply Indiana procedural law to resolve these issues. *See R.P. Leasing, LLC*, 47 N.E.3d at 1217 n.6 ("'When the parties to a contract agree on the law which should control the contract, we will give effect to their agreement. At the same time, Indiana procedural law applies.'" (quoting *Homer v. Guzulaitis*, 567 N.E.2d 153, 156 (Ind. Ct. App. 1991), *trans. denied*). As a general rule, a trial court has broad discretion in framing orders so that the relief granted conforms to the circumstances of the particular case, and that discretion is limited only to relief based on the issues presented. *Mitchell v. Stevenson*, 677 N.E.2d 551, 561-62 (Ind. Ct. App. 1997), *trans. denied*.

[36] In addressing this argument, we begin by noting that Kennedy does not claim that the Policy prohibits Lincoln National from seeking reimbursement of overpayments. Indeed, this would be unpersuasive given the Policy's provision that if "benefits have been overpaid on any short-term disability or long-term disability claim, full reimbursement to [Lincoln National] is required within 60 days" and that "[s]uch reimbursement is required [if] the overpayment is due to . . . the Insured Employee's receipt of Other Income Benefits." (Appellant's App. Vol. II, p. 57). In addition, Kennedy does not develop any argument that the trial court lacked authority to impose a 12% interest rate, only that it was premature to do so in a summary judgment order on liability issues on a complaint for declaratory judgment.

[37] Regarding the specificity of Lincoln National's claim for relief, we note that Indiana Trial Rule 54(C) provides that "every final judgment shall grant the

relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." In its complaint for declaratory judgment, Lincoln National requested a ruling that it is permitted "to offset any disability benefits that [Kennedy] has received from the [SSA] after June 2, 2013 against any long-term disability benefits she has received under the LTD Policy after June 2, 2013" and for "[s]uch other and further relief as the [c]ourt deems just and equitable." (Appellant's App. Vol. II, p. 37). As we have already determined, the trial court properly found that Lincoln National was entitled to offset Kennedy's SSDBs. Having made that correct determination which created the potential for overpayment, the trial court's order that Lincoln National could recoup any overpayment from Kennedy, subject to interest, flowed directly from the relief requested by Lincoln National and an application of the Policy's terms. Lincoln National was not required to request that relief specifically. *See Unishops, Inc. v. May's Family Ctrs., Inc.*, 399 N.E.2d 760, 767 (Ind. Ct. App. 1980) (rejecting Unishops' argument that the relief granted was not specifically pleaded in the complaint in light of the discretion accorded the trial court under T.R. 54(C)).

[38] As to the timing of the trial court's ruling, Kennedy's primary concern appears to be that she has not had an opportunity to present her claimed affirmative defenses to any amounts recoupable by Lincoln National, as she does not argue that the trial court erred in rendering a comparable ruling in her favor as to amounts owed to her by Lincoln National as a result of what the trial court had concluded was an over-reaching offset. However, as acknowledged by

Kennedy, this matter has only proceeded to summary judgment on the liability issues presented by Lincoln National's complaint for declaratory judgment and Kennedy's contract counter-claims. The trial court has yet to enter final judgment on damages. Presumably, Kennedy would have the opportunity to present her alleged defenses if this matter proceeds to a damages phase. Therefore, we find no abuse of discretion in the substance or the timing of the trial court's ruling.

CONCLUSION

[39] Based on the foregoing, we conclude that Lincoln National was entitled to full summary judgment as a matter of law based on the Policy's provisions, and therefore, we reverse the trial court's grant of partial summary judgment to Kennedy and enter summary judgment in favor of Lincoln National. In addition, we conclude that the trial court did not abuse its discretion when it ordered that Lincoln National was entitled to reimbursement of overpaid benefits, subject to interest.

[40] Affirmed in part, reversed in part, and summary judgment entered for Lincoln National.

Najam, J. and Crone, J. concur