

his complaint, alleging a breach of a contract, as a class action. For the following reasons, we reverse and remand.

¶ 3

FACTS

¶ 4 In his class action complaint, the plaintiff alleges that he is a doctor of chiropractic medicine and that he treated Glen Halford, one of MetLife's insureds, for injuries sustained in an automobile accident for which Mr. Halford was entitled to coverage under the medical payments provision of his MetLife policy. The complaint alleges that the medical payments provision in Mr. Halford's MetLife insurance policy provides that MetLife will pay reasonable expenses incurred for necessary medical services because of bodily injury caused by an accident and sustained by a covered person. According to the complaint, Mr. Halford assigned his claim for medical payments coverage under the MetLife policy to the plaintiff. The plaintiff then submitted his bills for treatment of Mr. Halford to MetLife, which made reductions to the bills using a computer software program that systematically makes reductions to bills based on a formula. The explanation for the reduction listed on the explanation of benefits (EOB) was that "the recommended payment is based on the usual and customary fee for the provider's geographic region."

¶ 5 Count I of the complaint alleges a cause of action for a breach of contract on the basis that MetLife breached the insurance contract by failing to pay the full amount of medical expenses that Mr. Halford incurred. Although count II of the complaint alleges a cause of action for a violation of the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 to 12 (West 2002)), count II was not the subject of the circuit court's order granting a class certification, and thus is not a subject of this appeal. The plaintiff filed an amended motion for class certification, which included a request to certify a proposed class as follows:

"All insured persons, or licensed medical providers by assignment, residing in Alabama, Arizona, California, Colorado, Connecticut, Georgia, Illinois, Indiana,

Louisiana, Missouri, Ohio, North Carolina, South Carolina, Tennessee, and Wisconsin, who, during the period from February 21, 1993, to the date of this Order, (a) submitted claims for payment of medical expenses pursuant to Defendants' Medpay coverage providing for payment of 'reasonable' medical charges or expenses; (b) had their claim adjusted by Defendant Met Life Home & Auto and reviewed by computer bill review software; (c) received or were tendered partial payment in an amount less than the submitted medical expenses due to 'reason code 30', 'reason code 41' or equivalent reason codes, utilizing a Conversion Factor times Relative Value methodology; and (d) received or were tendered an amount less than the stated Medpay policy limits."

¶ 6 Excluded from the class are claims that were submitted under statutory personal injury protection coverage, claims that were submitted for review by defendants' special investigation or fraud units, claims with respect to which policy limits were paid in full, and claims with respect to reductions that were overridden and paid. Also excluded from the class are persons whose claims were settled as part of the settlement in *Miller v. MetLife Auto & Home*, No. 05-2-02549-2KNT (Sup. Ct. King Co., Washington), persons who are members of the Illinois judiciary, and persons who are officers or directors (including immediate family members) of the defendants or their affiliates.

¶ 7 On November 29, 2010, the circuit court entered an order certifying the class as set forth above. MetLife filed a timely petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(8) (eff. Sept. 1, 2006) on December 29, 2010, which this court allowed on January 28, 2011.

¶ 8 ANALYSIS

¶ 9 "Decisions regarding class certification are within the sound discretion of the trial court and should be overturned only where the court clearly abused its discretion or applied

impermissible legal criteria.' " *Bemis v. Safeco Insurance Co. of America*, 407 Ill. App. 3d 1164, 1167 (2011) (Donovan, J., specially concurring) (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 125-26 (2005) (citing *McCabe v. Burgess*, 75 Ill. 2d 457, 464 (1979), and *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1001 (1991))). The allegations of the class action complaint and procedural posture of this case are identical to that in *Bemis* (407 Ill. App. 3d at 1168-70), wherein this court held that individualized issues regarding whether the bills submitted by a medical provider reflect reasonable charges for necessary medical services and whether medical providers possess valid assignments would predominate at trial, defeating the commonality requirement for a class action as set forth in section 2-801 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-801 (West 2006)). The same individualized issues will predominate in this case.

¶ 10 The plaintiff argues that this court's reliance in *Bemis* on the Illinois Supreme Court's pronouncement in *Avery* (216 Ill. 2d at 128) and other cases that the commonality requirement set forth in section 2-801 of the Code (735 ILCS 5/2-801 (West 2010)) requires that the proponent of class certification show that "the successful adjudication of the purported class representatives' individual claims will establish a right of recovery in other class members" is misplaced because in *Avery* and other cases, the supreme court misquoted or misconstrued language in cases that predated section 2-801. This court is bound by principles of *stare decisis* to follow *Avery* and its progeny unless and until they are overruled by the Illinois Supreme Court. *King v. Northern Indiana Commuter Transportation District*, 337 Ill. App. 3d 52, 55 (2003) (the appellate court is bound by the principle of *stare decisis* and therefore must adhere to the decisions of our supreme court). For these reasons, we find that the circuit court erred when it granted the plaintiff's motion for a class certification.

¶ 11

CONCLUSION

¶ 12 For the reasons set forth above, the November 29, 2010, order of the circuit court of Madison County that granted the plaintiff's motion to certify count I of his complaint, alleging a breach of contract, as a class action, is reversed, and this cause is remanded to the circuit court for further proceedings not inconsistent with this order.

¶ 13 Reversed; cause remanded.