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Court Rules Plaintiff has Standing to Bring Private Cause of Action Against No-Fault Insurer to Recover Double Damages for Amounts Paid by Medicare

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The Michigan Court of Appeals recently confirmed that a plaintiff may bring a private cause of action under 42 USC 1395y(b)(3)(A) to recover such payments made by Medicare, prior to a judicial determination that the Medicare payments are related to a motor vehicle accident.

In *Holmes v Farm Bureau*, Docket No. 320723, 2015 WL 2437102 (Mich. Ct. App. May 19, 2015), the plaintiff was injured in an automobile accident and incurred medical expenses "related to the accident," some of which were covered by Medicare and the plaintiff's Medicare AARP Supplemental Insurance. Farm Bureau paid none of the medical expenses.

The plaintiff filed suit, and among other claims, asserted that (1) under federal law, Farm Bureau should have paid the plaintiff's medical bills related to the accident, not Medicare; and (2) that federal law created a private cause of action for when Medicare pays expenses that should have been paid for by a no-fault carrier.

Farm Bureau moved for partial summary disposition on both issues, noting that the plaintiff admitted all of her medical bills related to the accident had been paid for by Medicare and her Medicare Supplemental Insurance. The trial court granted summary disposition in Farm Bureau's favor, first determining that because the policy was coordinated (MCL 500.3109a), Farm Bureau was not primary for medical expenses, and second, even if Farm Bureau was primary over Medicare, it was up to Medicare, not the plaintiff, to seek reimbursement for medical expenses paid on the plaintiff's behalf.

The plaintiff appealed, and the Michigan Court of Appeals reversed, finding that the plaintiff's policy with Farm Bureau was primary for medical expenses, and that the plaintiff did have a private cause of action under the Medicare Secondary Payer Act (MSP).

First, the appellate court reasoned that "as a matter of law, Medicare will not provide primary coverage when coverage is also provided by a 'primary payer' such as no fault insurance." 42 USC 1395y(b)(2)(A).

Second, the appellate court indicated that "given the plain statutory language, it is clear that a private cause of action exists to recover funds paid by Medicare, and the plaintiff is not precluded from seeking recovery from defendant merely because her bills have been paid by Medicare." In addition, the court held that the plaintiff has a private cause of action to recover double damages under the MSP, without the need to have "previously demonstrated a responsibility to pay by defendant in order to proceed." In other words, a the plaintiff is "not required to 'first sue and win, in order to sue again' under the double damages private cause of action created by 42 USC 1395y(b)(3)(A)."

On average, Medicare reimbursement rates are significantly less than what no-fault insurers pay for the same services. As such, double damages under the MSP may still be less than what a no-fault insurer would have otherwise paid.

In summary, the appellate court confirmed that Medicare will always be secondary to no-fault insurance for motor vehicle accident-related treatment and expenses. But more importantly, the court's opinion now makes clear that a plaintiff is allowed to bring a private cause of action against a no-fault insurer without a prior judicial determination that the no-fault insurer may ultimately be responsible, and a the plaintiff is entitled to double damages.

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