PLUNKETT COONEY

Supreme Court Clarifies Requirements for No-Fault Attendant Care Services (MCL 500.3107(1)(a))

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The Michigan Supreme Court clarified how much and under what circumstances Michigan No-Fault attendant care benefits under MCL 500.3107(1)(a) are claimable by a family member for taking care of an injured party.

In *Douglas v Allstate Ins Co*, the Supreme Court reaffirmed that MCL 500.3107(1)(a) imposes four requirements an insured must prove when claiming attendant care benefits: (1) the expense must be for an injured person's care, recovery, or rehabilitation; (2) the expense must be reasonably necessary; (3) the expense must be incurred; and (4) the charge must be reasonable.

In *Douglas*, Plaintiff suffered a severe closed-head brain injury in 1996. The plaintiff's physician stated that the plaintiff required attendant care. Plaintiff's wife allegedly provided her husband's attendant care and submitted some attendant care forms, but admittedly did not itemize much of her claimed time.

The issues before the Court were to determine whether the services provided constituted services "for an injured person's care," the extent to which expenses for Plaintiff's care were actually incurred, and whether the hourly rate awarded by the circuit court was reasonable.

Because Plaintiff's wife traveled to and communicated with Plaintiff's medical providers and managed Plaintiff's medications, the Court found that some of the claimed services could be considered attendant care services. However, the Court went on to say that "even if a claimant can show that services were for [plaintiff's] care and were reasonably necessary, an insurer is not obliged to pay any amount except upon submission of evidence that services were *actually rendered* and of the *actual cost expended*."

The Court reasoned that because a charge is something "required or demanded," "the caregiver must have an expectation [of] compensat[ion] because there is no charge incurred when a good or service is provided with *no* expectation of compensation from the insurer."

The Court explained that "[t]he fact that charges have been incurred can be shown 'by various means,' including 'a contract for products and services' or 'a paid bill.'" It stated that "[a]ny insured who incurs charges for services must present proof of those charges in order to establish, by a preponderance of

evidence, that [the insured] is entitled to PIP benefits." This evidentiary standard used to determine whether expenses were incurred does not change "simply because a family member, rather than a commercial health care provider, acts as the claimant's caregiver."

Furthermore, the Court stated that the evidentiary requirement is most easily satisfied when an insured or a caregiver submits itemized statements, bills, contracts, or logs listing the nature of the service provided with sufficient detail for an insurer to determine whether they are compensable.

As to reasonableness of the hourly rate, the Court relied on its earlier decision in *Bonkowski v Allstate Ins Co*, stating that "a commercial agency's rate for attendant care services is irrelevant to the fact-finder's determination of what constitutes a reasonable rate for a family member's provision of those services." The court ruled that "a fact-finder may base the hourly rate for a family member's provision of attendant care services on what health care agencies compensate their employees," not what the agency charges their patients.

After concluding that plaintiff failed to satisfy two of the four requirements necessary to recover PIP benefits for attendant care, the Michigan Supreme Court remanded the case for further proceedings.

In light of this important decision, insurers should pay careful attention to the four requirements claimants must satisfy concerning attendant care before paying out PIP benefits. Insurers should make sure services provided are "*for* an injured person's care, recovery, and rehabilitation," and not "ordinary household tasks." Moreover, insurers should determine whether the provider expected to be compensated for the services rendered. In addition, it is now clear that a reasonable hourly rate is *not* what a commercial agency charges its patients; instead, the more relevant inquiry is the rate actually paid to caregivers who provide similar services.

For further information about attendant care or Michigan's No-Fault Act, or if you have questions about how this recent ruling could affect your business, please contact the authors of this Rapid Report or any member of Plunkett Cooney's Trucking and Transportation Practice Group.