091739

IN THE COUNTY COURT FOR
ORANGE COUNTY, FLORIDA

ERIC BRAVO, an individual by and through his assignee, ALTAMONTE SPRINGS DIAGNOSTIC IMAGING, INC. d/b/a MID FLORIDA IMAGING,

CASE NO. 2009-SC-235

Plaintiff,

v.

STATE FARM FIRE & CASUALTY COMPANY,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGMENT

THIS CAUSE, came before the Court on December 14, 2009, on Defendant's Motion for Summary Judgment, and the Court having reviewed the Motion for Summary Judgment, Applicable Law and hearing arguments of counsel finds that there are no material facts in dispute and Defendant, STATE FARM FIRE & CASUALTY COMPANY ("State Farm") is entitled to Final Judgment as a matter of law.

BACKGROUND/UNDISPUTED FACTS

State Farm insured Eric Bravo during the period of March 31, 2008 through July 24, 2008 under a personal auto policy. The personal injury protection policy provided $10,000.00 in PIP coverage and $5,000.00 in medical payments coverage.

On July 21, 2008, Eric Bravo was involved in an automobile accident. He and, through assignment of benefits, his assignees thereafter made claims for PIP and medical payments coverage. State Farm paid medical bills under the coverages.

On August 27, 2008, Eric Bravo received services at Mid-Florida Imaging which included the CPT Code 72158, an MRI of the lumbar spine without and with gadolinium contrast. Thereafter, Plaintiff submitted its bill for services which said bill was received by State Farm on September 12, 2008. The total amount submitted for CPT Code 72158 was $2,754.10. On September 24, 2008, State Farm issued payment to Mid-Florida Imaging in the amount of $1,245.20. This amount represented 200% of $622.60 which was the Outpatient Prospective Payment System (OPPS) amount listed under the Medicare Part B physicians' fee schedule. Additionally, on September 24, 2008, State Farm sent to Plaintiff an Explanation of Review detailing the reasons for the payment amount. The Explanation of Review set forth that effective January 1, 2007; Medicare capped the payment for the technical portion of the MRI at the Outpatient Prospective Payment System (OPPS).

On October 14, 2008, Mid-Florida Imaging sent a demand letter to State Farm seeking payment of the principal amount of $712.82. The demand letter was received by State Farm on October 17, 2008. On November 7, 2008, State Farm responded to Plaintiff's demand letter asserting that State Farm paid the subject bill in accordance with Medicare Part B and Fla. Stat. §627.736. The resulting lawsuit was filed on January 20, 2009 and State Farm was served through the Florida Department of Financial Services on January 22, 2009.

LEGAL ISSUE

The legal issue in this case involves the interpretation of Fla. Stat. §627.736 (5)(a)(2) and §627.736(5)(a)(3). More specifically, State Farm contends that the statutory phrase "allowable amount under the participating physicians fee schedule of Medicare Part B" refers to the actual amount allowed by Medicare under the published fee schedule and that the Outpatient Prospective Payments System (OPPS) adjustment or cap is expressly incorporated into the "allowable amount" under the fee schedule. State Farm asserts it properly paid the subject MRI bills at issue in accordance with Section 627.736(5)(a), Fla. Stat. More specifically, State Farm asserts that it paid the MRI provider according to the participating physician category under the Physician Fee Schedule of Medicare Part B which incorporates the Outpatient Prospective Payment System (OPPS) cap amount. State Farm argues that, for the reasons set forth herein, its Motion for Summary Judgment should be granted. It is Plaintiff's position that the Florida PIP Statute requires State Farm to calculate benefits in accordance with a specific fee schedule (i.e., the participating physicians fee schedule) and that the Outpatient Prospective Payment System (OPPS) cap does not apply.

Florida Statue §627.736 controls the payment for services such as MRIs. The relevant statutes state in part:

> (5) CHARGES FOR TREATMENT OF INJURED PERSONS.
>
> 2. The insurer may limit reimbursement to 80% of the following schedule of maximum charges:

> f. For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B. However, if such services, supplies or care is not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or case is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.
>
> 3. For purposes of subparagraphs 2., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies, or care was rendered and for the area in which such services were rendered, except that it may not be less than the allowable amount under the participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.
>
> 5. If an insurer limits payment as authorized by subparagraph 2., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount of maximum policy limits.

Between 2001 and 2007, the Florida No-Fault Law required PIP insurers, like State Farm, to pay MRI providers for services to insureds an amount that was 80 percent of 200% of the 2001 Medicare Part B Participating Physician Fee Schedule published by Medicare, plus an annual "consumer price increase" adjustment. This payment system engendered substantial litigation over how it was to be applied. See Millennium Diagnostic Imaging Center, Inc. v. Security Nat. Ins. Co., 882 So. 2d 1027 (Fla. 3d DCA 2004); Clearview Imaging, LLC v. State Farm Mut. Auto. Ins. Co., 932 So. 2d 423 (Fla. 2d DCA 2006); Progressive Auto Pro Ins. Co. v. One Stop Medical, Inc., 985 So. 2d 10

(Fla. 4th DCA 2008); Altamonte Springs Imaging LC v. State Farm Mut. Auto. Ins. Co., 2009 WL 1531610 (Fla. 3d DCA 2009). The old No-Fault Law was abrogated in October, 2007.

State Farm argues that, unlike the prior law, the new No-Fault Law established a permissive fee schedule applicable to essentially all medical procedures. §627.736(5)(a)(2). Subsection (5)(a)(2), *supra,* states that an insurer "may limit reimbursement to 80 percent of the following schedules of maximum charges". Several of the fee schedules of "maximum charges" use the amount paid under the federal Medicare system as a baseline for calculating PIP insurance payments.

As they pertain to the instant case, the "maximum charges" reimbursed for MRI services also looks to the federal Medicare system as the baseline for calculating the PIP insurance payments. Subsection (5)(a)(2)(f) describes the methodology that a PIP insurer may use to limit reimbursement for "all other medical services, supplies, and care." It is undisputed that the MRI services at issue in this case were provided in a non-emergency, non-hospital setting, and therefore fall within the "other medical services" described in subsection (5)(a)(2)(f). For such services, the No-Fault Law provides that "maximum charges" a provider is reimbursed is "200 percent of the allowable amount under the participating physician's schedule of Medicare Part B." Fla. Stat. §627.736 (5)(a)(2)(f). Subsection (5)(a)(3) adds that, for purposes of subparagraph 2, "the applicable fee schedule...under Medicare is the fee schedule":

> "in effect at the time the services, supplies, or care was rendered and for the area in which such services were rendered, except that it may

> not be less than the allowable amount under the participating physicians' schedule of Medicare Part B for 2007."

In other words, the fee schedule for maximum charges for the current year must be compared to the schedule for 2007, and the higher of the two is to be paid to the provider.

State Farm contends that the "allowable amount" under the participating physicians schedule of Medicare Part B refers to the actual amount allowed by Medicare under the published fee schedule, and that the OPPS adjustment is expressly incorporated into the "allowable amount" under the fee schedule. As such, State Farm may apply the amount allowed by Medicare, including the OPPS amount, as a matter of law when it makes reimbursement payments to MRI providers pursuant to Fla. Stat. §627.736(5)(a)(2)(f).

The word "allowable", in common usage, means "permissible; not forbidden; not unlawful or improper." Sharp v. United States, 14 F. 3d 583, 587 (Fed. Cir. 1993)(citing Webster's Third New International Dictionary (1986)). "A fundamental canon of statutory construction is that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." Perrin v. United States, 444 U.S. 37, 42 (1979). It is State Farm's position that the statutory reference to an "allowable amount" under the participating physicians fee scheduled refers to the "permissible" amount or "not forbidden" amount for that fee schedule. Thus, it is State Farm's position that the amount due under the fee schedule is the amount that is actually "allowed" to the provider by Medicare Part B. If the Florida Legislature had not intended to have the word "allowable" mean anything, it could have just as easily eliminated this word from

the statute. However, the word "allowable" is present and its placement is not viewed as an accident.

The court has reviewed the statute and finds that the language is clear and unambiguous and therefore applies the plain meaning rule. State Farm alternatively argued that even if the statute were not clear, the House Message Summary dated May 1, 2008 and the Florida Senate Bill Analysis and Fiscal Statement dated April 1, 2008 demonstrates the legislature's intent to have insurer pay 200% of what Medicare would pay to a participating physician. The summaries state:

> The bill clarifies that insurers' reimbursement for medical services would be based on 200 percent of the applicable Medicare Part B fee schedule "for participating physicians."
>
> Under Medicare Part B, a participating physician accepts Medicare's allowed charge as payment in full for all of their Medicare patients.

The court reviewed Fla. Stat. §§ 627.736(5)(a)(2)(f), (5)(a)(3); 42 USC §1395w-4 which establishes the Medicare Part B fee schedule; Section 5102 of the Deficit Reduction Act of 2005 amending 42 USC §1395w-4(C)(2)(B); a report of the United States Government Accountability Office regarding Medicare Trends in Fees at GAO-08-1102R (Medical Imaging Payments); 71 F.R. 69624-01; 72 F.R. 66222-01; CMS PFS National Payment Amount File; First Coast Service Options 2007 & 2008 Fee Schedules for CPT Code 72158; Medicare Part B Updates dated December 2006 Volume 4 Number 9; March 2007 Special Issue Update; CMS Physician Fee Schedule Search page for CPT 72158; and the Affidavit of Mirta Rosado.

State Farm argued that the amount allowed by Medicare Part B and paid to its participating physicians for CPT Code 72158 in year 2008 is $622.50. The Court compared the 2007 rate for the same code ($587.10). Since the 2007 amount is not greater than 2008, the statute requires payment of the 2008 amount. Here State Farm paid $1,245.20 or 200% of $622.60.

In summary, State Farm argued that under the Medicare statutory scheme, CMS regulations, and actual practice, the "allowable amount" under the participating fee schedule for Medicare Part B is capped at the OPPS amount. As Medicare applies the OPPS adjustment, so should Florida PIP insurers, as they calculate the reimbursement amount required by §627.736(5)(a)(2)(f). Here, State Farm calculated the "allowable amount" in exactly the same way Medicare did; in accordance with the plain meaning of §627.736(5)(a)(2)(f). State Farm used the appropriate calculation methodology and its motion for summary judgment is therefore granted. This Court recognizes and adopts the analysis and reasoning of the Honorable Robert W. Lee in MRI Services, I, LLC d/b/a C & R Imaging of Hollywood as assignee of Yunono Baranovskaya v. Mercury Insurance Company, 17 Fla. L. Weekly Supp. 46a (Cty. Crt., 17th Jud. Cir., Broward County, November 4, 2009).

IT IS, THEREFORE, ADJUDGED AND DECREED AS FOLLOWS:

Final Judgment be and the same is hereby entered in favor of Defendant, STATE FARM FIRE & CASUALTY COMPANY and against Plaintiff, ERIC BRAVO, an

individual by and through his assignee, ALTAMONTE SPRINGS DIAGNOSTIC IMAGING, INC. d/b/a MID FLORIDA IMAGING.

Plaintiff, ERIC BRAVO, an individual by and through his assignee, ALTAMONTE SPRINGS DIAGNOSTIC IMAGING, INC. d/b/a MID FLORIDA IMAGING, takes nothing by this action and Defendant, STATE FARM FIRE & CASUALTY COMPANY, shall go forth without day.

DONE AND ORDERED this 14 day of January, 2010 in Orlando, Orange County, Florida.

JOHN E. JORDAN
County Judge

Copies furnished to:
John L. Morrow, Esq., Attorney for Defendant, Orlando
Michelle Kelson, Esq., Attorney for Plaintiff, Orlando