IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION RS

CASE NO. 2008 SC 016673 SB

DCI MRI, INC.,
(Lakiesha Alexander),

Plaintiff(s),

vs.

DAIRYLAND INSURANCE COMPANY,

Defendant(s).

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on February 24, 2010, on Defendant's Motion for Summary Judgment, and the Court, having reviewed the pleadings, heard argument of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiff is a medical provider and has rendered MRI services to the assignor in the above-referenced case. Pursuant to Florida Statute 627.736, Plaintiff seeks compensation for services rendered to assignor from Defendant for 80% for medical services which are related to the automobile accident in question. The parties have entered into a Joint Stipulation of Facts and Law for all facts and issues not in dispute. The following facts were agreed to by the parties:

(A) On February 2, 2008, Defendant issued a policy of insurance which provided no-fault coverage to Lakiesha Alexander.

(B) On March 30, 2008, Lakiesha Alexander was involved in a motor vehicle accident in which she sustained injuries.

(C) On July 10, 2008, Plaintiff provided a MRI of the lumbar spine (both professional and technical components) to Defendant's insured, Lakiesha Alexander. On that date, Lakiesha Alexander executed an assignment of benefits in favor of Plaintiff.

(D) The MRI testing was medically necessary and related to injuries sustained during the motor vehicle accident.

(E) Defendant received a CMS-1500 billing form from Plaintiff on July 20, 2008. A true, genuine and admissible copy of the CMS-1500 was attached to the Joint Stipulation of Facts of Law in this case. The billing was timely, and the form was filled out correctly. Defendant raises no defenses to the form of the CMS-1500 form or to the assignment of policy benefits.

(F) Plaintiff billed $1,800.00 for the MRI (CPT code 72148). Plaintiff contends this amount is reasonable and represents a usual and customary charge.

(G) Defendant determined the allowable reimbursement amount for the MRI (CPT code 72148) was $870.52.

(H) Defendant contends it may limit reimbursement of the MRI pursuant to Florida Statutes Section 627.736(5)(a)2.f.

(I) Defendant then paid 80% of 200% of the Outpatient Prospective Payment System (OPPS) cap adopted by Medicare to further reduce payments made under Medicare Part B.

(J) Defendant paid Plaintiff $696.42, which represents 80% of $870.52.[1]

(K) The 2008 version of the no-fault act is applicable to this case.

2. The parties believe there are no disputed issues of fact, and this case rests upon pure questions of law. Those questions are:

I. Does Florida Statutes Section 627.736(5)(a)2.f. allow the application of a fee schedule to services provided by a MRI provider, like Plaintiff?

II. May an insurer apply a fee schedule to reduce the "reasonable" medical expenses without disclosing such fee schedule in its policy of insurance or its rate filing with the state?

III. If a fee schedule is mandatory and/or permitted by the insurance policy, may the insurer apply the OPPS cap to the 200% of the Medicare Part B rate under Florida Statutes Section 627.736(5)(a)2.f.?

3. Due to the limitations of time in the arguments made in this case, the parties agreed that this Court shall address only questions I and II above in this ruling.

4. Plaintiff contends that Dairyland Insurance Company should have calculated the reimbursements for its bills at 80% of the charged amount ($1,800) rather than limiting the reimbursements in accordance with the formula described in Section 627.736(5)(a)2.f., Florida Statutes (2008). In support of its position, Plaintiff has argued that Dairyland may not utilize the fee schedule provision in the new PIP statute because the insured's policy does not specifically reference section 627.736(5)(a)2.f.

5. This Court, however, agrees with Defendant's position that the Participating Physician Fee Schedule pursuant to Medicare Part B as designated under Florida Statutes

[1] $870.52 represents 200% of the Participating Fee Schedule as designated under Medicare Part B, utilizing the Outpatient Prospective Payment System (OPPS) adopted by Medicare to establish payments made under Medicare Part B for the identified diagnostic test.

Section 627.736(5)(a)2.f. may be applied to the MRI services at issue in the above referenced matter for the following reasons:

6. The Court finds that there is no requirement in the PIP statute that insurers amend their policies to specifically reference Section 627.736(5)(a)2 (2008) before applying the statutorily authorized fee schedules. Under Florida Statutes Section 627.7407(2), "[a]ny personal injury protection policy in effect on or after January 1, 2008, shall be deemed to incorporate the provisions of the Florida Motor Vehicle No-Fault Law, as revived and amended by this act."

7. Additionally, this Court finds that it was the Legislature's intent to incorporate all provisions of the Florida Motor No-Fault Law into the contract at issue in this case, as the Legislature provided under Florida Statutes Section 627.7407(5)(c), "[t]hat if the policyholder already has personal injury protection coverage, that coverage will be amended effective January 1, 2008, to incorporate legally required changes without any additional premium and that the policyholder is not required to take any further action." The Legislature intended, by way of explicit provisions that accompanied the reenactment and revival of the Florida Motor Vehicle No-Fault Law of 2008, that all provisions, mandatory or otherwise, be incorporated into the policy of insurance at issue in this action. F.S. Sec. 627.7407. As a result, all provisions of the renewed no-fault statute are incorporated into the subject policy of insurance.

Accordingly, this Court finds that Defendant may utilize a fee schedule in determining the amount of payment for medical bills at issue pursuant to the Florida PIP statute without explicit reference of the fee schedule in the policy of insurance or subject rate filings.

8. Section 627.736(5)(a)2 (2008) of the new no-fault law entitled "Charges for treatment of injured persons" states that an insurer "may limit reimbursement [of a provider's reasonable charges] to 80 percent" of several listed schedules of "maximum charges."

9. The pertinent provisions of the Florida Motor Vehicle No-Fault statute states:

(5) Charges for treatment of injured persons.

(a)1. Any provider, hospital, clinic, or other person or institution lawfully rendering

4. Subparagraph 2 does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 2 must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider would be entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes.

Section 627.736(5)(a), Fla. Stat. (2008)

10. This Court finds that the clear intent of the Legislature was that any personal injury protection policy in effect on or after January 1, 2008, was revised and amended to incorporate the new PIP statute enacted on January 1, 2008, i.e., including the new fee schedule delineated in Florida Statutes Section 627.736(5). Therefore, as a matter of law, Defendant was properly allowed to utilize the Participating Physician Fee Schedule under Medicare Part B in determining the amount allowed for the diagnostic services rendered in this case.

11. This Court reserves ruling on question III set forth on page 3 of this opinion, which is"[i]f a fee schedule is mandatory and/or permitted by the insurance policy, may

the insurer apply the OPPS cap to the 200% of the Medicare Park B rate under Florida Statutes Section 627.736(5)(a)2.f.?"

Based on the foregoing, it is

ORDERED AND ADJDUGED that Defendant's Motion for Summary Judgment is hereby GRANTED and to questions of law I and II.

DONE AND ORDERED in Delray Beach, Palm Beach County, Florida, this 23 day of March, 2010.

Janis Brustares Keyser

JANIS BRUSTARES KEYSER
COUNTY COURT JUDGE

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