

COUNTY COURT, PINELLAS COUNTY, FLORIDA
SMALL CLAIMS DIVISION
REF. 12-4908SC-SPC

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KEN BURKE
CLERK OF CIRCUIT COURT

SPINAL CORRECTION CENTERS d/b/a
STELLAR LIFE CARE, INC., as assignee
of MST SUNJIDA AFRIN,
Plaintiff(s),

vs.

DIRECT GENERAL INSURANCE
COMPANY,
Defendant(s).

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

This Cause came to be heard before this Court on Defendant's Motion for Summary Judgment with the Parties present, through counsel, and this Court having heard argument, reviewed the pleadings, motion, affidavit, policy of insurance and applicable law and being otherwise advised of the premises, it is hereby **Ordered and Adjudged** as follows,

1. Plaintiff sued Defendant for breach of contract for failing to pay 80% of reasonable and necessary medical expenses, pursuant to the policy of insurance.
2. Defendant filed a Motion for Summary Judgment claiming it paid the medical expenses, pursuant to §627.736(5)(a)2.f, Fla. Stat. (2011), consistent with its policy of insurance with the insured. Section 627.736(5)(a)2.f., Fla. Stat. states the insurer may limit reimbursement to 80% of the maximum charges,

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 §440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

The Parties agree this is the applicable statute controlling this matter.

- 3. Plaintiff argues that the insured's PIP policy of insurance fails to specifically reference §627.736(5)(a)2.f, Fla. Stat. for payment of reasonable and necessary medical expenses; thus, Defendant cannot pay benefits pursuant to this statute.
- 4. The Parties agree that the applicable policy of insurance states as follows:

**PART II – FLORIDA MOTOR VEHICLE NO FAULT LAW
(COVERAGE B PERSONAL INJURY PROTECTION COVERAGE)**

DEFINITIONS

...
1) **"NO FAULT LAW"** means the version of the Florida Motor Vehicle No Fault Law that is in effect on the date we issue a new policy to you or the date we issue a renewal policy to you, whichever is later...

INSURING AGREEMENT

...
(A)...
Subject to the limits shown on the Declarations Page, PIP benefits are:

- 1) 80% of all reasonable and necessary medical expenses;

...
(B)...
In determining whether charges for medical expenses under this Part are reasonable, we may reduce payments for amounts that are billed to any lesser amount that results from the application of any schedule of charges or alternative reimbursement method that is expressly referenced or authorized for use by insurers under the No Fault Law. ...

5. In Kingsway Amigo Ins. Co. v. Ocean Health, Inc., 63 So. 3d 63, 68 (Fla. 4th DCA 2011), the Court held that the PIP policy is required to specify the applicable payment methodology. The policy, in the Kingsway case, made no reference to the permissive methodology of subsection 627.736(5)(a)2. The policy cites the No-Fault Act, states it will pay 80% of medical expenses and defines medical expenses as those that it is required to pay that are reasonable expenses for medically necessary services.
Kingsway, 63 So. 3d at 67.
6. In the present case, the policy of insurance states the insurer will pay 80% of all reasonable and necessary medical expenses. It further states “in determining whether charges for medical expenses under this Part are reasonable, we may reduce payments for amounts that are billed to any lesser amount that results from the application of any schedule of charges or alternative reimbursement method that is expressly referenced or authorized for use by the insurers under the No Fault Law.”
7. Thus, the policy of insurance, in this matter, specifically tells the insured how it determines a reasonable charge. Moreover, §627.736(5)(a)2, Fla. Stat. is the only section that expressly references or authorizes reduction of medical expenses based on a schedule of charges and an alternative reimbursement method, under the No Fault Law. As such, no confusion exists as to Defendant’s payment method pursuant to the policy of insurance and no greater coverage is permitted under the policy based on its language.

It is therefore **Ordered and Adjudged** that this Court **GRANTS** Defendant’s Motion for Summary Judgment. Based on the complaint, this Court is unable to determine if this was the only issue in this matter, thus this Court does not enter Final Summary Judgment. If this is the

sole determinative issue, the Parties shall provide the Court with an order for Final Summary Judgment.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida, this 9th day of July, 2013.



KATHLEEN T. HESSINGER
COUNTY JUDGE

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