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IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

NORTH LAUDERDALE
CHIROPRACTIC
CENTER, INC. (a/a/o Carline Simon),

Case No: 09 05314 COCE 53

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant

FINAL JUDGMENT FOR THE DEFENDANT

THIS CAUSE having come before the Court for hearing on June 1, 2011 on Defendant's Motion for Final Summary Judgment and the Court having reviewed the Motion and supporting affidavits; the entire Court file; and reviewing the relevant legal authorities; having heard arguments by Counsel; having made a thorough review of the matters filed on record; and having been otherwise fully advised in the premises, it is hereby

ORDER AND ADJUDGED:

Background

This is an action by the Plaintiff, North Lauderdale Chiropractic Center a/a/o Carline Simon to recover alleged overdue Personal Injury Protection ("PIP") benefits from the Defendant, State Farm Fire and Casualty Company.

On March 27, 2009, the Defendant, State Farm Fire and Casualty Company received a pre-suit demand letter from Plaintiff, dated March 24, 2009, requesting allegedly overdue PIP benefits under "Florida Statute §627.736(10)" for medical treatment and/or services allegedly rendered to Carline Simon as a result of injuries she sustained in a motor vehicle accident on February 5, 2008.

This pre-suit demand letter requested PIP benefits in the amount of \$8,220.76 for alleged dates of service February 8, 2008 through June 27, 2008. Moreover, the Plaintiff listed CPT code 99215 for \$300.00 for date of service February 8, 2008 on a ledger attached to the demand letter. However, this date of service was never received by State Farm Fire and Casualty Company prior to receiving Plaintiff's demand letter.

The Plaintiff submitted a Standard and Disclosure and Acknowledgement Form pursuant to *Florida Statute §627.736 (5)(e)*, and a "Notice of Initiation of Treatment"

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Exhibit 3

Form to State Farm Fire and Casualty Company which listed the first date of treatment rendered to Carline Simon as being February 19, 2008.

On April 9, 2009, State Farm Fire and Casualty Company claims representative, Tevana Malcolm, sent timely correspondence to the Plaintiff in response to its pre-suit demand letter, stating among other things, that Plaintiff's pre-suit demand letter did not comply with *Florida Statute, §627.736* in that it did not "state with specificity" or include an itemized statement specifying each exact amount, date of treatment, service, or accommodation, and the type of benefits claimed to be due." Furthermore, Ms. Malcolm advised the Plaintiff that the ledger submitted a charge for CPT code 99215 for date of service February 8, 2008 which was never previously billed to State Farm Fire and Casualty Company. Moreover, this correspondence stated that Ms. Malcolm had previously spoken with Plaintiff's counsel's office at the time, Labovick & Labovick, PA, and was told that this charge was listed in error.

The Plaintiff did not submit an additional or corrected demand letter after receiving the response from the Defendant on April 9, 2009. Thereafter, the Plaintiff filed the instant action in which it alleged that PIP benefits were due and owing in the amount of \$8,220.76 for alleged dates of service February 8, 2009 through June 27, 2008. These dates of service and alleged amount listed in the Complaint were identical to those dates of service and amount listed in Plaintiff's pre-suit demand letter.

The Defendant has argued that the Plaintiff failed to meet the necessary condition precedent to filing suit when it submitted a pre-suit demand letter which did not specifically comply with *Florida Statute, 627.736(10)(2008)*.

Undisputed Facts

The facts material to Defendant's Motion for Final Summary Judgment are undisputed and established by the pleadings and discovery on record and the material facts are set forth below.

The Defendant issued a policy of insurance to Carline Simon, which provided PIP benefits with limits up to \$10,000.00. This policy was in full force and effect on the date of the subject accident on February 5, 2008.

The Defendant received bills from the Plaintiff which listed that medical treatment was rendered to Carline Simon for dates of service February 19, 2008 through February 27, 2008.

It is undisputed that the first date of service rendered to Carline Simon by the Plaintiff was on February 19, 2008 and not February 8, 2008 as was listed in Plaintiff's demand letter.

The Defendant has submitted a sworn affidavit from State Farm claims representative, Charles Benton who testified, among other things, that State Farm never received a bill from the Plaintiff for CPT code 99215 for date of service February 8, 2008.

That Plaintiff's demand letter dated March 24, 2009 and received by the Defendant on March 27, 2009, listed CPT code 99215 for date of service February 8, 2008 as being due and owing. That the Plaintiff's counsel has admitted at oral argument that CPT code 99215 in the amount of \$300.00 for date of service February 8, 2008 was listed in error on the demand letter.

That the Defendant advised the Plaintiff of the error in its demand letter regarding CPT code 99215 for date of service February 8, 2008 and that the demand letter did not comply with *Florida Statute, §627.736* in that it did not "state with specificity" or include an itemized statement specifying each exact amount, date of treatment, service, or accommodation, and the type of benefits claimed to be due."

The Plaintiff did not submit an updated demand letter to the Defendant listing the correct dates of service and amount which it alleged was due and owing. That the amount listed in Plaintiff's demand letter is incorrect as it lists an additional amount of \$300.00 for CPT code 99215 for date of service February 8, 2008 for treatment that was not rendered to Carline Simon.

The Plaintiff did not file a reply, affidavit or any other pleading in response to Defendant's Motion for Summary Judgment.

Findings of Law

The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or missed findings of fact and conclusions of law.

Florida Statute, 627.736(10), states in pertinent part:

10) DEMAND LETTER

(a) As a condition precedent to filing any action for benefits under this section, the insurer must be provided with written notice of an intent to initiate litigation. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice required shall state that it is a "demand letter under s. 627,736 (10)" and shall state with specificity:

1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

2. The claim number or policy number upon which such claim was originally submitted to the insurer.
3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service or accommodation, and the type of benefit claimed to be due . . . Id.

The legislature has mandated that the "Demand Letter" requirements of *Florida Statute, §627.736(10)* must be strictly adhered to and the failure to do so does not satisfy the demand letter condition precedent set forth in the Statute. See *MRI Associates of America, LLC (a/a/o Ebba Register) v. State Farm Fire and Casualty Company*, WL 1661402 (Fla.App. 4 Dist., May 4, 2011). The language of subsection 627.736(10)(b)(3) requires precision in a demand letter, by its requirement of an "itemized statement specifying each exact amount." See *Id.* ~~The statute mandates that the date of service for a bill be specified early in the claim process. Id. The pre-suit demand letter must provide proper notice of the exact amount due. Id., citing to *Fountain Imaging of West Palm Beach, LLC v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 614a (Fla. 1st DCA, March 29, 2007).~~

The Plaintiff submitted a pre-suit demand letter to the Defendant which listed a medical service under CPT code 99215 in an attached patient ledger for date of service February 8, 2008 in the amount of \$300.00. This amount was calculated into the total amount that the Plaintiff alleged was due and owing. However, it is undisputed that this service was never rendered to the patient and that it was listed in the demand letter in error. The Plaintiff did not submit an updated or corrected demand letter in an attempt to cure the defect listed in its demand letter after it was notified by the Defendant of said defect. Instead, the Plaintiff filed suit against the Defendant and listed the same erroneous February 8, 2008 date of service and amount in its Complaint as was listed in the demand letter.

Although substantial compliance may be allowed in certain parts of the PIP statute, ~~it is clear from legislative intent and the current case law that strict specificity must be adhered to regarding the demand letter requirements.~~ The Plaintiff failed to strictly adhere to the demand letter requirements as required under *Florida Statute 627.736(10)* when it listed a service and charge in the demand letter that was clearly not rendered to the patient and/or submitted in error. Moreover, the Plaintiff did not attempt to remedy this error by submitting a corrected demand letter after being notified by the Defendant of the defects. Thus, as the Plaintiff's demand letter lists an amount that is allegedly due and owing that is clearly incorrect, the Plaintiff has not satisfied the condition precedent to filing this lawsuit and as such has failed to comply with *Florida Statute 627.736(10)*. ~~The statutory requirements surrounding such demand letter are significant, substantial~~

