

IN THE COUNTY COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

WESTLAND SOUTH MEDICAL
CENTER A/A/O YOREMIA
FRANCISCO,

Case No: 07-5050 CC 25 (01)

Plaintiff,

vs.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Defendant

**AMENDED ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT PURSUANT TO §627.736(6)(b) AND ENTRY
OF FINAL JUDGMENT**

THIS matter having come to be heard on April 26, 2010, after due notice to the parties, on Defendant's, State Farm Mutual Automobile Insurance Company, Cross-Motion for Summary Judgment based on its request for additional documentation pursuant to F.S. §627.736(6)(b), the Court having heard argument of counsel and the Court having been otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

Defendant's Motion is hereby granted.

THIS COURT FUTHER FINDS that:

Findings of Fact:

1. This is an action by the Plaintiff, Westland South Medical Center a/a/o Yoremia Francisco (hereinafter referred to as "Westland") against the Defendant, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") for alleged overdue Personal Injury Protection (PIP) benefits pursuant to a policy of automobile insurance issued by State Farm to Yoremia Francisco.
2. Westland submitted ten sets of medical bills to State Farm for payment of medical services purportedly rendered to Yoremia Francisco between dates of service November 29, 2006 through February 14, 2007, allegedly as a result of a November 14, 2006 automobile accident. The first set of bills from Westland, for dates of service Nov. 29, 2006 through Dec. 8, 2006 was received on Dec. 18, 2006. The next set of bills from Westland, for dates of service Dec. 11, 2006 through Dec. 14, 2006, was received on

Dec. 22, 2006. The remaining medical bills submitted by the Plaintiff were received as follows: dates of service Dec. 18, 2006 through Dec. 28, 2006 were received on Jan. 8, 2007; dates of service Jan. 2, 2007 through Jan. 4, 2007 were received on Jan. 16, 2007; dates of service Jan. 8, 2007 through Jan. 12, 2007 were received on Jan. 22, 2007; dates of service Jan. 16, 2007 through Jan. 18, 2007 were received on Jan. 31, 2007; dates of service Jan. 23, 2007 through Jan. 26, 2007 were received on Feb. 5, 2007; dates of service Jan. 29, 2007 through Feb. 2, 2007 were received on Feb. 12, 2007; dates of service Feb. 5, 2007 through Feb. 9, 2007 were received on Feb. 20, 2007; and dates of service Feb. 12, 2007 through Feb. 14, 2007 were received on Feb. 26, 2007.

3. State Farm paid the first two sets of medical bills submitted by Westland for dates of service November 29, 2006 through December 14, 2006. At issue in this suit are dates of service December 18, 2006 through February 14, 2007.

4. On January 19, 2007, State Farm sent a timely written request for additional documentation and information pursuant to §627.736(6)(b), Florida Statutes (2007) ("6(b) request"). (The request was sent within 30 days of State Farm's receipt of the third set of medical bills on January 8, 2007, and was the only written request for additional documentation and information pursuant to §627.736(6)(b) sent by State Farm to Westland with respect to Yoremia Francisco.)

5. Specifically, State Farm's 6(b) request states that it is being sent pursuant to §627.736(6)(b) and that State Farm is requesting information, *including but not limited to*, ten itemized requests:

1. The entire medical file, including but not limited to any and all handwritten notes (to include Travel Cards), SOAP notes, billing records, statements, super bills, records, reports, correspondence, charts, test findings, evaluation reports, prescriptions, referral forms, laboratory and radiology reports, patient questionnaires, assignments of benefits, releases, proof of prior mailings, authorizations and all other medical records and documents concerning this patient;
2. Any and all forms completed and/or signed by or on behalf of the patient;
3. A complete copy of any and all medical files that you have regarding the prior treatment or care of this patient;
4. The names and copies of licenses (medical and occupational) of all the individuals who participated in the care of this patient;
5. A copy of the Clinic License as required by Florida Statute;

6. The name and license number of your Medical Director as required by Florida Statute;
7. Copies of contracts/leases/agreements written or verbal with any diagnostic/medical provider used in this patient's care;
8. Any and all information or documentation evidencing the billing from and the payment to your facility from any private individuals or private health care insurers for CPT codes 95851 in conjunction with CPT 99214;
9. Any and all information or documentation evidencing the billing from and the payment to your facility from medicare/medicaid for CPT codes 95851 in conjunction with CPT 99214;
10. Any and all information or documentation evidencing the billing from and the payment to your facility from workers compensation insurers/carriers for CPT codes 95851 in conjunction with CPT 99214;

6. Westland responded to State Farm's 6(b) request for additional documentation and information; however, Westland provided only some of the requested documentation and information.

7. State Farm agrees that it was provided with a response to requests numbers 3 through 10¹; however, at issue is Westland's failure to completely respond to requests numbers 1 and 2. In its January 22, 2007 letter (received by State Farm on January 25, 2007), Westland states:

- "1. Previously provided and in State Farm's possession;
2. Previously provided and in State Farm's possession;
- ..."

In its January 22, 2007 letter, Westland also stated:

"Additionally, I call to your attention that pursuant to the statute that you cite to for the authority of making your request State Farm does not have a right to make such an overbroad, irrelevant request for information – the statute allows an insurer to require that the medical provider "...furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically

¹ Westland responded to requests numbers 3, 7, 8, 9, and 10 by stating no documentation existed and/or by raising objections to the information requested; and Westland responded to requests numbers 4, 5, and 6 by attaching licenses. It is undisputed that no other documents were attached to Westland's response to State Farm's 6(b) request other than the licenses.

necessary....” Your letter of 1-19-07 is not a valid request for information pursuant to Fla. Stat. 627.736(6)(b) and instead is only an attempt by State Farm to illegally toll the 30 days which it has to investigate a claim and make a claims decision.

Additionally, I respectfully call to your attention that pursuant to Fla. Stat. 627.736(6)(b), “...an insurer that requests documentation or information pertaining to the reasonableness of charges or medical necessity under this paragraph without a reasonable basis for such requests as a general business practice is engaging in an unfair trade practice under the insurance code.”

It is undisputed that no additional documentation or information was sent to State Farm in response to requests numbers 1 and 2. Additionally, Westland failed to provide a sworn statement under oath as required by §627.736(6)(b).

8. In response to Westland’s demand letters, State Farm advised Westland that its claim for PIP benefits was still under investigation and that Westland had failed to comply with State Farm’s statutory request for information pursuant to §627.736(6)(b).

9. On or about March 8, 2007, Westland filed the instant action for failure to pay PIP benefits. State Farm raised as an affirmative defense that Westland is not entitled to recovery because the medical bills are not overdue where Westland failed to provide a complete response to its 6(b) request for documentation and information.

10. On December 23, 2009, State Farm took the deposition of Ms. Nadine Crespo, corporate representative and records custodian for Westland, in the cases of *Westland South Medical Center a/a/o Jorge Basurto v. State Farm Fire and Casualty Company, Case Number 07-5049 SP 25 (01)*, and *Westland South Medical Center a/a/o Osmel Echevarria v. State Farm Fire and Casualty Company, Case Number 07-5051 SP 25 (01)*, wherein she gave testimony regarding Westland’s practice with respect to what documents Westland normally sends to insurers. Ms. Crespo testified that there are documents maintained as part of the complete patient file at Westland that are *never* sent to State Farm. Ms. Crespo testified “... I don’t send the incident report and the medical malpractice. I never send that. And the HCFA I never send that” (referring to blank Health Insurance Claim Form (HCFA) that contains the patient’s signature). Ms. Crespo further testified that the medical malpractice form and the blank HCFA are not sent to State Farm “... because I don’t think they need that.”

11. The Affidavit testimony of Ms. Crespo filed in this case does not state that the aforementioned documents were in fact provided to State Farm in response to the 6(b) request or as part of the claims process. To the contrary, Ms. Crespo’s testimony in her Affidavit and deposition taken in this case establish that in support of claims sent to State Farm, Westland only sends medical bills and records, assignment of benefits, standard disclosure and acknowledgment forms and clinic licenses. It is undisputed that the complete patient file for Yoremia Francisco, as attached to Ms. Crespo’s deposition, includes documents entitled “Accident Injury Report”, “Medical Malpractice Insurance Disclosure Statement Instructions” and a blank HCFA Form signed by Yoremia Francisco. It is undisputed that these documents were not produced in response to State Farm’s 6(b) request, but were produced for the first time in litigation.

Conclusions of Law

12. The pertinent part of §627.736(6)(b), Florida Statutes (2007) states:

Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically necessary, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or her or its records regarding such history, condition, treatment, dates, and costs of treatment; provided that this shall not limit the introduction of evidence at trial. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and such sworn statement shall pay all reasonable costs connected therewith. If an insurer makes a written request for documentation or information under this paragraph within 30 days after having received notice of the amount of a covered loss under paragraph (4)(a), the amount or the partial amount which is the subject of the insurer's inquiry shall become overdue if the insurer does not pay in accordance with paragraph (4)(b) or within 10 days after the insurer's receipt of the requested documentation or information, whichever occurs later. For purposes of this paragraph, the term "receipt" includes, but is not limited to, inspection and copying pursuant to this paragraph. Any insurer that requests documentation or information pertaining to reasonableness of charges or medical necessity under this paragraph without a reasonable basis for such requests as a general business practice is engaging in an unfair trade practice under the insurance code (emphasis added).

13. Pursuant to §627.736(6)(b), Florida Statutes (2007), the Court finds that State Farm had a reasonable basis to request additional documentation and information from Westland in order to properly evaluate Westland's claim for PIP benefits. The Court further finds that State Farm was entitled to request additional documentation and information, including but not limited to, a complete copy of the medical file maintained by Westland for Yoremia Francisco and any and all forms completed and/or signed by or on her behalf.

14. Moreover, pursuant to §627.736(6)(b), Florida Statutes (2007), Westland had an obligation to provide a complete response to State Farm's request, and, until ten days after a complete response is provided, its medical bills are not overdue.

15. The Court finds that, because Westland failed to completely respond to requests numbers 1 and 2, Westland did not comply with State Farm's 6(b) request. Contrary to Westland's response to State Farm's 6(b) request that all the documents requested in numbers 1 and 2 were "previously provided and in State Farm's possession," the Court finds that prior to submission of the 6(b) request, Westland had *not* supplied all of the documentation requested in numbers 1 and 2, to which State Farm is entitled under §627.736(6)(b), Florida Statutes (2007). The Court further finds that Westland's representative is not entitled to choose which documents she believes State Farm to be entitled to under §627.736(6)(b), Florida Statutes (2007), nor is Westland entitled to make its own determination as to which documents requested are relevant.

16. To the contrary, the Court finds that the plain language of the statute requires a medical provider to respond to a timely request for additional information and provide all of the documentation and information requested.

17. Therefore, Westland had an affirmative obligation to completely respond to State Farm's 6(b) request which required, among other things, Westland to provide a complete copy of the medical file for Yoremia Francisco and all forms signed by or on behalf of Yoremia Francisco. In this case, Westland's response to requests numbers 1 and 2, asserting "previously provided and in State Farm's possession", is insufficient where not all documents in the medical file had been previously provided.

18. The Court further finds that State Farm's 6(b) request requesting documentation and information, *including but not limited to*, the ten itemized requests required Westland to also provide a sworn statement "that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury" as outlined by the Statute. It is undisputed that Westland's partial response to State Farm's 6(b) request did not include a sworn statement.

19. The purpose of §627.736(6)(b) is to allow an insurer to avail itself of informal discovery from a medical provider regarding treatment to its insured without the need for litigation. This is to allow an insurer to determine exactly what records were, and were not, maintained by a medical provider so as to be able to make an informed decision as to whether and to what extent a claim is payable. See Kaminester v. State Farm Mut. Auto. Ins. Co., 775 So.2d 981 (Fla. 4th DCA 2000) (rehearing denied Feb. 5, 2001); State Farm Mut. Auto. Ins. Co. v. Dr. Elias Goldstein, et al., 798 So.2d 807 (Fla. 4th DCA 2001); and MRI Services, Inc. v. State Farm Mut. Auto. Ins. Co., 807 So.2d 783 (Fla. 2nd DCA 2002).

20. If a medical provider, as in this case, chooses to not provide all the documentation and information requested by an insurer pursuant to a 6(b) request, it

does so at its own peril since a medical provider is not in the position to decide what documents are or are not relevant to an insurer when evaluating a claim.

21. This Court further finds that since at the time the instant lawsuit was filed Westland's medical bills were not overdue, Westland's claim is premature and State Farm is entitled to final summary judgment as a matter of law. See First Health Chiropractic a/a/o Miguel Amill v. State Farm Fire and Casualty Co., 15 Fla. L. Weekly Supp. 1102a (Florida 9th Judicial Circuit in and for Orange County May 16, 2008) (Order Granting Defendant's Motion for Final Summary Judgment) (reasoning that "statute requires that the medical provider provide all the documents requested and that should the medical provider choose not to provide all the documentation and/or information requested regarding the history, condition, treatment and costs of treatment, the medical provider does so at its own peril"); Wellington Chiropractic Center of Palm Beach, Inc. v. Nationwide Mutual Ins. Co., 11 Fla. L. Weekly Supp. 929b (15th Judicial Circuit in and for Palm Beach County, August 3, 2004) ("to allow a provider to respond to a request for information in an indirect, ambiguous manner, or to do so by omission, would completely deflect and defeat the intent and purpose of the statute and its clear cut deadlines and requirements."); Hialeah Medical Corp. a/a/o Sunride Mora v. Mercury Insurance Co. of Florida, 16 Fla. L. Weekly Supp. 958a (Florida 11th Judicial Circuit in and for Miami-Dade County July 17, 2009) (Order Granting Defendant's Motion for Final Summary Judgment Pursuant to F.S. §627.736(6)(b)); Professional Medical Group a/a/o Jurgen Ugalde v. Progressive Express Ins. Co., 13 Fla. L. Weekly Supp. 1000b (Florida 11th Judicial Circuit in and for Miami-Dade County July 11, 2006) (Order Granting Defendant's Motion for Final Summary Judgment Pursuant to F.S. §627.736(6)(b) (2003)); and Dr. Mitchell G. Jomsky a/a/o Amber Dubois (2) v. Progressive Auto Pro Ins. Co., 13 Fla. L. Weekly Supp. 908c (Florida 17th Judicial Circuit in and for Broward County, June 26, 2006).

Pursuant to this Order Granting Defendant's Motion for Summary Judgment, it is adjudged that the Plaintiff, Westland South Medical Center a/a/o Yoremia Francisco, take nothing by this action and that Defendant, State Farm Mutual Automobile Insurance Company, shall go hence without day.

The Court shall retain jurisdiction over the case with respect to the Defendant's entitlement to attorney's fees and costs and the amount thereof.

DONE AND ORDERED in Chambers, at 3100 Ponce De Leon Boulevard, Room 1-4, Coral Gables Courthouse, Coral Gables, Florida, 33134 this _____ day of _____, 200_____.

NOV - 8 2010

~~Judge Andrew S. Hague~~
County Court Judge Andrew S. Hague

Copies furnished to:

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Maria E. Corredor, Esq., Counsel for Plaintiff
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