

**IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA**

**EMERGENCY PHYSICIANS, Inc. d/b/a
EMERGENCY RESOURCES GROUP,
a/a/o Pricilla Jarvis,
Plaintiff,**

CASE NO.: 2016 21447 CONS

v.

DIVISION: 73 (MILLER)

**USAA CASUALTY INSURANCE
COMPANY,
Defendant.**

_____ /

AMENDED ORDER OF FINAL SUMMARY DISPOSITION

This matter is before the court upon *Plaintiff's Motion for Reconsideration/Rehearing* filed on March 7, 2019 (Doc. 109.) The court has reviewed the *Motion*, conducted a hearing on the matter, and considered the arguments and filings of both parties on the issues, and the court finds as follows.

FACTUAL FINDINGS

This case involves a claim for unpaid PIP benefits stemming from a car accident on April 2, 2014 involving Pricilla Jarvis, who is one of Defendant's insureds. As a result of this accident, Ms. Jarvis sought medical treatment from the Plaintiff among other providers. The parties agree that Plaintiff is a priority provider under Florida Statute § 627.736(4)(c). The Plaintiff provided its services to Ms. Jarvis and then billed the Defendant under Ms. Jarvis's PIP insurance policy and an assignment of benefits. Prior to receiving Plaintiff's bill, the Defendant received three other bills for PIP benefits. Two of these bills were from non-priority providers and one was from another priority provider. Each of the first four bills, including Plaintiff's bill, were received during the first 30 days following the notice of the loss to the Defendant. Under

its interpretation of Florida law, despite receiving Plaintiff's bill fourth in line, Defendant moved Plaintiff's bill up for payment ahead of the two previously received, non-priority providers' bills. The effect of doing so meant that the deductible elected¹ by Ms. Jarvis was applied to Plaintiff's bill instead of one of the other bills received by Defendant before Plaintiff's.

ANALYSIS AND CONCLUSIONS OF LAW

The issue before the court is whether an insurance company is required to bump a priority medical provider's bill to the front of the line for payment ahead of non-priority providers under subsection 4(c) of the PIP statute. Under the PIP statute and various appellate decisions, a few of the related issues are relatively settled. First, not all medical providers are treated the same. Some are priority providers, and some are not. For those that are deemed "priority," they receive an extra layer of protection under the PIP statute in the form of a temporary \$5,000 reserve, taken from the \$10,000 of overall benefits available for payable claims². Second, the \$10,000 of PIP benefits is not payable until any elected deductible has been fully satisfied³. Third, any elected deductible applies equally to both priority and non-priority providers' bills⁴.

The disagreement in this case appears to center around what the Fifth District Court of Appeal meant when it held that priority providers' bills will be "prioritized for payment." This court previously concluded the phrase means priority providers' bills would be paid ahead of non-priority provider's bills. However, upon further deliberation, the court concludes this is an overly-simplistic approach to the meaning of this key phrase in the *Mercury* opinion.

¹ Although previously contested, at the conclusion of the April 12, 2019 hearing on the *Plaintiff's Motion for Reconsideration/Rehearing*, Plaintiff indicated it was no longer contesting whether a deductible was elected in this specific case. Thus, the Court will grant the Defendant's motion for summary judgment on this issue without further comment.

² Florida Statute § 627.736(4)(c)

³ *Mercury Ins. Co. of Fla. v. Emergency Physicians of Cent.*, 182 So.3d 661, 667 (Fla. 5th DCA 2015).

⁴ *Id.* at 668.

This court now concludes that “prioritized for payment” language in *Mercury* may well have been referring to the protected status of 4(c) providers and the \$5,000 temporary reserve under the PIP statute. Priority providers such as Plaintiff have the first right to access this \$5,000 reserve for payment of their bills submitted during the 30-day period following the notice of the loss, whereas non-priority providers do not. This interpretation is consistent with the Seventh Circuit appellate decisions interpreting *Mercury* as requiring payment of bills in the order of receipt.

Even if this court were inclined to agree with Defendant’s position as to the meaning of “prioritize for payment” (as it previously did), the Seventh Circuit’s appellate decisions are reinforced by other cases⁵ from the Fifth District Court of Appeal itself stating that *Mercury*’s holding was that bills must be paid in the order they are received. This court is bound by those decisions. Therefore, under *Mercury* and the cases applying it since, the Defendant should not have moved Plaintiff’s bill up for payment based upon its status as a priority provider. Rather, Defendant should have paid Plaintiff’s bill in the order of receipt.

REQUEST TO CERTIFY QUESTION OF GREAT PUBLIC IMPORTANCE

Defendant requests that the court certify this issue as a question of great public importance such that appellate review would bypass the circuit court under Florida Rule of Appellate Procedure 9.030(b)(4)(A). As the court in *Star Casualty v. U.S.A. Diagnostics, Inc.* observed, there is little case law to guide county courts on what constitutes a question of “great

⁵ See *Progressive American Ins. Co. v. Emergency Physicians of Cent. Florida*, 187 So.3d 898 , 899 (Fla. 5th DCA 2016) (stating “In *Mercury*... this court held that all claims, including EPCF’s priority claim, are properly applied to a personal injury protection deductible in the order they are received.”) (emphasis added); and *Progressive Exp. Ins. Co. v. Emergency Physicians of Cent. Florida*, 187 So.3d 1278 (Fla. 5th DCA 2016) (stating “In *Mercury*, this court held that all claims, including Emergency Physicians of Central Florida’s priority claim, are properly applied to a personal injury deductible in the order that they are received.”) (emphasis added).

public importance.” 855 So.2d 251, 252 (Fla. 4th DCA 2003). The court continued, “[h]owever, one general guide is that a question should be certified where [the district court’s] decision will affect a large segment of the public and the extant decisional law may not coalesce around a single answer to the question posed.” *Id.*

Furthermore, in *Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mutual Automobile Insurance Company*, the court further clarified that “[w]here district courts have already ruled on the issue and uniformly have answered the question, this does not pose a question of great public importance.” 137 So.3d 1049, 1054 (Fla. 4th DCA 2014).

In this case, the court notes that the Fifth District Court of Appeal has already expressly ruled on this issue, and the court has been presented with no conflicting district court decisions. Nor has the court located any in its own research. Thus the available case law from the district courts appears to “coalesce around a single answer to the question posed.” *Star Casualty, supra*. The court declines to certify this as a question of great public importance.

Based upon the foregoing, it is ORDERED AND ADJUDGED as follows:

1. The *Corrected Summary Disposition Regarding Application of Deductible* issued on March 7, 2019 (Doc. 107.) is hereby WITHDRAWN and this opinion is substituted in its place.
2. *Plaintiff’s Amended Motion for Final Summary Judgment* (Doc. 80.) is GRANTED IN PART (as to application of deductible) and DENIED IN PART (as to election of deductible).
3. *Defendant’s Motion for Summary Judgment Regarding Proper Application of Plaintiff’s bills to the Deductible with Memorandum of Law* (Doc. 85.) is DENIED.

4. *Defendant's Motion for Summary Judgment Regarding Election of Deductible with Memorandum of Law* (Doc. 103.) is GRANTED.

DONE AND ORDERED, in Chambers at Deland, Volusia County, Florida.

5/3/2019 3:17 PM 2016 21447

CONS


e-Signed 5/3/2019 3:17 PM 2016 21447 CONS

A. Christian Miller
County Court Judge

Copies to:
Doug K. Walker, Esq.
Catherine Arpen, Esq.