CFN: 20190124108 BOOK 31342 PAGE 909
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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

M A N D A T E

FROM CIRCUIT COURT
APPELLATE DIVISION
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

2019 FEB 25 PM 12:52
Reventia S. Witherspoon

APPELLATE CASE #: **2016-000098-AP-01**

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

vs.

MILLENNIUM RADIOLOGY, LLC

This cause having been brought to this Court by appeal, and after due consideration the court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this COURT attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the STATE OF FLORIDA.

Lower Tribunal Case Number(s): **2014-003280-SP-23**

WITNESS the Honorable Miguel De La O, Administrative Judge of the Appellate Division of the Circuit Court of the Eleventh Judicial Circuit of Florida and the seal of the said Circuit Court at Miami, this 25th day of February, 2019.

A True Copy
Attest
Harvey Ruvin
Clerk of Courts

By: _____
Reventia S. Witherspoon
Deputy Clerk

2/26/23

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BY COUNSEL.

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BLUMSTEIN
M Hirsch

NOT FINAL UNTIL TIME EXPIRES
TO FILE RE-HEARING MOTION,
AND, IF FILED, DISPOSED OF.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

APPELLATE CASE NO.: 16-098-AP-01

LOWER CASE NO.: 14-003280-SP-23

STATE FARM MUTUAL AUTOMOBILE,
INSURANCE COMPANY,

Appellant,

v.

MILLENNIUM RADIOLOGY, LLC

Appellee.

Opinion filed: February 8, 2018.

On appeal by State Farm Mutual Automobile Insurance Company ("State Farm") from a "Final Judgment and Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Cross Motion for Summary Judgment" (the "Final Judgment") entered on February 29, 2016.

De Ann J. McLemore, Mark D. Tinker and Charles W. Hall of Banker Lopez Gassler P.A., for Appellant.

Robert J. Hauser, of Pankauski Hauser PLLC, and Yigal D. Kahana, of the Law Offices of Yigal D. Kahana, for Appellee.

Before: HIRSCH, DIAZ, and BLUMSTEIN, JJ.

BLUMSTEIN, J.

On or about August 19, 2013, Saloma Dudley ("Dudley") was injured in an automobile accident. At all relevant times, Dudley was insured under a State Farm 9810A Insurance Policy (the "Policy"). On September 24, 2013, Dudley had two MRIs performed at Millennium Radiology LLC ("Millennium") and assigned her State Farm PIP benefits to Millennium, which

then billed State Farm for each procedure. In determining a reasonable amount for reimbursement, State Farm applied a Multiple Procedure Payment Reduction ("MPPR"). Millennium filed an action in county court alleging that State Farm breached the terms and conditions of its Policy and Florida's No-Fault Motor Vehicle Law.

Millennium filed a "Motion for Final Summary Judgment" and State Farm filed a "Cross Motion for Summary Judgment." There was no issue as to the relatedness and medical necessity of the services at issue. Millennium argued that State Farm was obligated by its Policy to reimburse pursuant to the Medicare Part B participating physician fee schedule (the "Medicare Part B Schedule"); however, instead it reimbursed using the MPPR method. Millennium contended that this reduction of benefits violated the terms of the Policy and Florida's No-Fault Law. State Farm's "Cross Motion for Summary Judgment" claimed that the Policy explicitly allowed State Farm to limit reimbursement pursuant to not just the Medicare Part B Schedule, but also, the Medicare coding policies, including the MPPR method. State Farm claimed that the Policy at issue is unambiguous and must be applied as written.

The trial court in its Final Judgment found as a matter of law that the Policy is clear and unambiguous in its election to pay pursuant to the 2007 Medicare Part B Schedule; however, the trial court further found that the general references in the Policy to Medicare coding policies were vague and ambiguous. The trial court found that the Policy did not clearly and unambiguously elect the MPPR, and does not permit State Farm to limit reimbursement to less than 80% of the allowable amount under the 2007 Medicare Part B Schedule. Accordingly, the trial court granted Final Summary Judgment for Millennium and denied State Farm's Cross Motion for Summary Judgment. This appeal followed.

This Appellate Court finds that the State Farm Policy clearly and unambiguously elects the use of Medicare coding policies and payment methodologies, which includes utilization of the MPPR method. The Office of Insurance Regulation ("OIR") approved the Policy.[1] MPPR is a permissible payment methodology and not an improper "utilization limit."

MPPR is basically a payment methodology used by the Medicare program to reduce payment for medical services when two or more services have been rendered on the same day, to the same patient, by the same physician, in the same session. Performing all services in one session reduces time, labor, and general costs associated with performing multiple procedures over multiple days. The State Farm Policy clearly and unambiguously elects the use of Medicare coding policies and payment methodologies, including applicable modifiers such as the use of MPPR. Further, the PIP Statute was amended in 2012 and expressly permits the use of Medicare payment methodologies and/or coding policies. § 627.736(5)(a)(3), Fla. Stat. (2012).

In *Geico General Insurance Company v. Virtual Imagining Services, Inc.*, 141 So. 3d 147, 160 (Fla. 2013), the Florida Supreme Court held that "in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously draft a policy provision to achieve that result." However, the Court did not dictate a specific form for such notice. *Allstate Indemnity Company v. Markley Chiropractic & Acupuncture,* LLC, 226 So. 3d 262, 266 (Fla. 2d DCA 2016). Reason dictates that if *Virtual Imaging* does not require an insurer to use the specific term "Medicare" in electing and notifying its insured of the use of the Medicare fee schedule, then State Farm is not required to use the letters/acronym "MPPR" in notifying the insured of its possible use to determine costs. *Id.*

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[1] While the decision of the OIR is subject to judicial review, there is no reason to determine that the OIR approval is invalid.

The courts in *Allstate Fire and Cas. Ins. v. Stand-Up MRI of Tallahassee, P.A.*, 188 So. 3d 1 (Fla. 1st DCA 2015); *Markley, LLC*, 226 So. 3d at 266 (*Virtual Imaging* requires no "magic words"); *Fla. Wellness & Rehab. v. Allstate Fire & Cas. Inc. Co.*, 201 So. 3d 169 (Fla. 3d DCA 2016); and, *Orthopedic Specialists v. Allstate Ins. Co.*, 212 So. 3d 973 (Fla. 2017), interpreted an Allstate Policy, which is somewhat similar to the Policy at issue in the instant case. The Allstate policy references "any and all limitations authorized by section 627.736, or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued in the laws, including, but not limited to, all fee schedules."

The State Farm Policy references "the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers," tracking the language of the 2012 amendment.[2] The State Farm Policy is even more specific than the general reference to "all fee schedules" in the Allstate Policy that was upheld in the cases above and provides more than sufficient notice of the method of reimbursement.[3] State Farm gave adequate notice of its election of the fee schedules to limit its payments.

Based upon the above, this Appellate Court finds that the 2012 amendment to the No-Fault Statue explicitly permitted State Farm to utilize the Medicare coding policies and payment

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[2] Section 627.736(5)(a)(3), Fla. Stat. (2012) provides, in part, that: "subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services."

[3] The Ninth Judicial Circuit Appellate Court in *State Farm Automobile Insurance Company v. Florida Emergency Physicians Kang & Associates, M.D., P.A.*, 2016-CV-000024-A-O (Fla. 9th Jud. Cir. Ct. Dec 18, 2017), found "the State Farm notice … to be at least as clear as Allstate Notice in *Orthopedic Specialists*.

methodologies, that a specific reference to MPPA was not required, and thus, State Farm's Policy gave adequate notice of their possible use.[4]

While this issue was not addressed below, MPPR should not be considered an improper utilization limit. MPPR is a payment methodology used by Medicare to place limitations on the amount of reimbursement available, when more than one medical service such as an MRI is provided to the same patient in the same session. "It is not a utilization limit simply because it limits reimbursements." *SOCC, PL., a/a/o Youssef Assal v. Progressive Am. Ins. Co.*, 24 Fla. L. Weekly Supp. 163b (Fla. 13th Jud. Cir. Cnty. Ct. Apr 18, 2016); *see also Path Med. Broward a/a/o Shanti' Bryant v. Progressive Select Insurance Company,* CONO 15-005121 (Fla. 17th Jud. Cir Cty. Ct. June 15, 2016). A limit on utilization means a limitation on the use or duration of a particular service or item. *Interventional Spine Ctr., LLC, a/a/o Pascal Fils—Aime v. Progressive Am. Ins. Co.*, 23 Fla. L. Weekly Supp. 610a (Fla. 11th Jud. Cir. Cnty. Ct. Oct. 7, 2015). MPPR in no way limits the uses, duration, or the number of procedures, a provider may perform on a patient or that a patient may access. MPPR is simply a payment reduction employed due to the economic efficiencies achieved by performing multiple procedures in the same day.

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[4]*See also Millennium Radiology, LLC a/a/o Angela Renteria v. State Farm Fire and Casualty Company*, 23 Fla. L. Weekly Supp 360a (Fla. 11th Jud. Cir. Cty. Ct. Aug. 11, 2015) (State Farm was permitted to use MPPR to determine allowable amount under Medicare Part B schedule); *Interventional Spine Ctr., LLC, a/a/o Pascal Fils—Aime v. Progressive Am. Ins. Co.*, 23 Fla. L. Weekly Supp. 610a (Fla. 11th Jud. Cir. Cnty. Ct. Oct. 7, 2015) (MPPR provides an allowable amount under Medicare Part B schedule); *AFO Imaging, Inc. a/a/o Asha Brown v. State Farm Mut. Uto. Ins. Co.*, 24 Fla. LL. Weekly Supp. 165b (Fla. 13th Jud. Cir. Cty. Ct. Mar. 15, 2016) (2012 version of the No-Fault Statute explicitly permits an insurer to consider Medicare coding policies); *Sports Imaging Center, LLC v. State Farm Mutual Automobile Insurance Company*, 562014SC000513C2 (Fla. 19th Jud. Cir. Cty. Ct. Nov. 8, 2017) (State Farm's 9810A policy properly incorporates the ability to limit payment); *Plantation Open MRI, LLC v. State Farm Mutual Automobile Insurance Company*, COCE 14 -011350 (54) (Fla. 17th Jud. Cir. Cty. Ct. Nov. 3, 2017) (State Farm 9810A Insurance Policy permitted it to reimburse below the 2007 Medicare Part B Fee schedule through the application of MPPR.).

Accordingly, the "Final Judgment and Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Cross Motion for Summary Judgment" is REVERSED and this matter is REMANDED with instructions to enter judgment in favor of State Farm on its Cross Motion for Summary Judgment. The trial court is further instructed to address all motions for fees and costs based upon this Appellate Court's opinion.

HIRSCH and DIAZ, JJ., concur

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