IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

MERCURY INSURANCE COMPANY OF FLORIDA ,

Appellant,

v.

EMERGENCY PHYSICIANS OF CENTRAL FLORIDA, LLP

Appellee.

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CASE NO.: 2013-CV-000046-A-O
LOWER COURT CASE NO. 2011-SC-8734-O

Appeal from the County Court,
in and for Orange County, Florida,
Adam McGinnis, County Court Judge.

Diane H. Tutt, Esquire, and
John L. Morrow, Esquire,
for Appellant.

Steven Dell, Esquire,
Bradford Cederberg, P.A., and
Kevin B. Weiss, Esq.,
for Appellee.

Before J. RODRIGUEZ, SHEA, and LATIMORE, J.J.

PER CURIAM.

FINAL ORDER AND OPINION
AFFIRMING TRIAL COURT'S FINAL JUDGMENT

Appellant, Mercury Insurance Company of Florida ("Mercury"), insurer of Tina House, brought an action against Emergency Physicians of Central Florida, LLP ("EPCF") based on an unfulfilled claim seeking personal injury protection ("PIP") benefits. EPCF's Motion for Summary Judgment was granted, resulting in Final Judgment for EPCF on May 20, 2013.

Mercury filed a timely appeal. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

Tina House suffered injuries in an accident and received emergency medical care from EPCF. At this time, she had insurance with Mercury with a $500 deductible. Mercury received notice of the accident on July 17, 2011. Ms. House assigned her PIP benefits to EPCF for its medical bill in the amount of $191. Mercury received EPCF's bill on August 5, 2011 and applied this bill to Ms. House's deductible rather than paying for it out of the mandatory statutory PIP reserve of $5,000. Mercury received numerous bills from non-emergency provider, John Maggio, totaling an amount that far exceeds Ms. House's deductible (R., 75-76).[1] These facts are undisputed.

EPCF claims that, as an emergency medical provider who submitted its bills within the 30-day statutory timeframe, it is a member of the specially recognized class of providers for whom there is a $5,000 reserve set aside. Mercury claims that EPCF is not allowed to automatically receive payment from this reserve and avoid application of the deductible. Therefore, Mercury applied EPCF's bill to the deductible and did not pay for it. As a result, EPCF filed suit on December 5, 2011. The trial court granted the Motion for Summary Judgment, ruling that EPCF's bill should not have been applied to the deductible and that it should have been paid for out of the $5,000 statutory reserve.

Mercury raises one issue on appeal: 1) whether the trial court erred and construed the PIP and deductible statutes contrary to their clear language, resulting in an improper granting of summary judgment for EPCF and entitlement to greater benefits than legally permitted.

[1] See attached PIP Paylog as submitted by Mercury, as part of Supplemental Record on Appeal, hereinafter called "R." This document shows the different bills submitted to Mercury in this case and delineates which were paid and which were applied to the deductible in question.

Mercury now asserts that the trial court construed the PIP and deductible statutes contrary to their clear language and, therefore, granted summary judgment to EPCF in error. Mercury claims that, as EPCF's bill was the first bill submitted in this accident, it was properly applied to the deductible. In this case, the deductible had not yet been met when EPCF's bill was submitted to Mercury.

The standard of review for reviewing the grant of a motion for summary judgment is *de novo*, as "[a] trial court may enter summary judgment only when there are no issues of material fact conclusively shown from the record and the movant is entitled to judgment as a matter of law." *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007) (quoting *Reeves v. N. Broward Hosp. Dist.*, 821 So. 2d 319, 321 (Fla. 4th DCA 2002)).

There is a ***mandatory*** statutory reserve of $5,000 of personal injury protection for payment to emergency physicians (emphasis added). Fla. Stat. § 627.736(4)(c). This amount must be used to pay claims filed by such physicians within 30 days after the insurer receives notice of the accident. *Id*. This language is plain and unambiguous. Where statutory language is clear and unambiguous, there is no reason to resort to rules of interpretation. The statute must be given its plain and obvious meaning. *Emergency Physicians of Central Florida, LLP a/a/o Asmaa Karani v. Progressive American Insurance Company*, Case No. 2011-SC-8737 (Fla. 9th Jud. Cir. in Orange County, January 30, 2013).

The implementation of this amended version of Fla. Stat. § 627.736(4)(c) demonstrates the Legislature's intent to provide an additional level of protection for emergency care providers that would ensure payment of their bills.[2] *Emergency Physicians of Central Florida, LLP a/a/o*

[2] Prior to January 1, 2008, Florida's PIP statute did not have this type of delineation between priority and non-priority providers, putting all providers in an equal position for application to the deductible and receiving of funds from insurers. The amendment of this statute makes it clear that the Legislature wished to change this lack of prioritization, and to provide a protected, recognized class with a guarantee of payment through the use of a

Abigail Pelletier v. Metropolitan Casualty Insurance Company, Case No. 2011-SC-002172 (Fla. 18th Jud. Cir. in Seminole County, June 26, 2014). *Emergency Physicians of Central Florida, LLP, a/a/o Andrea Flores v. Progressive Select Insurance Company*, Case No. 2011-SC-002284 (Fla. 18th Jud. Cir. in Seminole County, April 29, 2014). To ignore this would render Section (4)(c) meaningless. *Emergency Physicians of Central Florida, LLP a/a/o Asmaa Karani v. Progressive American Insurance Company,* Case No. 2011-SC-8737 (Fla. 9th Jud. Cir. in Orange County, January 30, 2013).

The language of this statute requires emergency physicians to submit their claims within 30 days of notice of the accident. If these physicians are the first to submit a claim, there is an increased likelihood that the insured's deductible will not yet be satisfied. If these bills were meant to be subject to the deductible, then the statutory 30 day requirement is the equivalent of making certain that these physicians' bills are applied to the insured's deductible and potentially not paid. If the providers wait to submit their bills in order to avoid having the deductible applied to them, they then run the risk that they will not be fully reimbursed. In cases without substantial priority medical bills, there is the risk that non-priority providers will wait until the 31st day to submit their bills so that they ensure the deductible will not be applied to their claim and the remaining PIP benefits reserve can be used to pay their bills, as allowed by statute. *Emergency Physicians of Central Florida a/a/o Adriel Rodriguez v. USAA General Indemnity Co.*, 20 Fla. L. Weekly Supp. 697a (Fla. 18th Jud. Cir. In Seminole County, February 27, 2013). It is illogical to believe that the intention behind this statute was to inevitably deprive emergency physicians of the reserve fund set aside specifically for them by subjecting them to having their bills applied to

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mandatory reserve fund. This guarantee is only given to priority providers but allows non-priority providers to receive payment from the remainder of funds still available 30 days after the notice of accident was given.

the deductible. Yet this is exactly what would occur if these bills were not protected from being applied to the deductible.

The deductible must first be applied to benefits paid to non-priority providers when both priority and non-priority providers seek payment of PIP benefits. *Id*. When a priority provider submits a bill for payment to a PIP carrier and satisfies each of the requirements in Fla. Stat. § 627.736(4)(c), it is entitled to be paid from the $5,000 reserve and its charges cannot be used to satisfy an elected deductible. *Emergency Medical Associates of Florida, L.L.C., a/a/o Janith Suddath v. Mercury Insurance Company of Florida*, Case No. 2012 31231 COCI (Fla. 7th Jud. Cir. in Volusia County, August 6, 2013). There is no statutory language that implies that the reservation goes into effect only after the deductible has been met. *Emergency Medical Associates of Florida, LLC a/a/o Rebel Middleton v. Mercury Insurance Company of Florida*, Case No. 2012-SC-000240 (Fla. 14th Jud. Cir. in Seminole County, January 7, 2014). This reserve is automatically set aside and made available for payment.

In this case, the record reflects that there were non-priority providers who submitted bills for payment. Two of these bills were applied to the deductible along with EPCF's bills (R., 75-76). As both priority and non-priority providers were seeking payment of PIP benefits, the bills from non-priority providers instead of EPCF's should have been applied to the deductible. *Emergency Physicians of Central Florida a/a/o Adriel Rodriguez*, 20 Fla. L. Weekly Supp. 697a. It is only when the deductible is satisfied by non-protected providers that the protected provider's bill would be paid. *Florida Emergency Physicians Kang & Assoc., M.D., P.A., a/a/o Oswaldo Pedroza v. Geico General Insurance Company*, Case No. 2011-SC-6994-O (Fla. 9th Jud. Cir. of Orange County, April, 2, 2014). In this case, the bills of the non-priority providers would have sufficiently satisfied the deductible, which this Court has previously found is a well-reasoned

argument behind not applying the priority provider's bills to the deductible. *Emergency Physicians of Central Florida, LLP a/a/o Ivan Romano v. Progressive Express Insurance Company*, Case No. 2012-SC-002128-O (Fla. 9th Jud. Cir. in Orange County, March 26, 2014). After these bills satisfied the deductible, the priority providers are to be paid out of the reserve fund. If there are funds remaining, non-priority providers can also be paid from this fund.

If no non-priority bills are received in a claim, the protected provider's bills would be applied to the deductible. *Emergency Physicians of Central Florida a/a/o Adriel Rodriguez v. USAA General Indemnity Company*, Case No. 2012-SC-705 (Fla. 18th Jud. Cir. in Seminole County, February 27, 2013). However, that is not the case here. It is clear that there were bills submitted by non-protected providers and these should have been applied to the deductible before applying the priority provider's bills.

Mercury acted improperly when it applied EPCF's bill to the deductible. *Emergency Physicians of Central Florida, LLP, a/a/o Timothy Newsome v. Progressive Select Insurance Company*, Case No. 12CC1980 (Fla. 18th Jud. Cir. in Seminole County, May 30, 2014). There were a myriad of non-priority bills that could have been applied to the deductible first. After this, EPCF's bills should have been paid out of the reserve fund which could then also be used to pay the remainder of the non-priority bills. To act differently would be to render Section 627.736(4)(c) pointless as it would not be fulfilling the legislative intent of setting aside money for priority providers in order to guarantee that they receive payment instead of risk non-payment as a result of being applied to a deductible.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's Final Summary Judgment is **AFFIRMED.**

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 5th day of January , 2015.

/S/
JOSE RODRIGUEZ
Presiding Circuit Judge

SHEA and LATIMORE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail and/or electronic mail to **Steven Dell, Esq.** and **Bradford Cederberg, P.A.**, at 11 South Bumby Ave., Suite 200, Orlando, FL 32803, and **Kevin B. Weiss, Esq.**, at 570 Crown Oak Centre Dr., Longwood, FL 32750, as counsels for Appellee; and **Diane H. Tutt, Esq.**, at 3440 Hollywood Blvd, 2nd Floor, Hollywood, FL 33021, and **John L. Morrow, Esq.**, at Two South Orange Ave, Suite 300, Orlando, FL 32801, as counsels for Appellant on the 5th day of January, 2015.

/S/
Judicial Assistant