J-A19014-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DR. RICHARD S. GLICK, D.O., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PROGRESSIVE NORTHERN INSURANCE COMPANY AND MOUNTAIN LAUREL INSURANCE COMPANY, D/B/A/ PROGRESSIVE INSURANCE COMPANY	:	
APPEAL OF: DR. RICHARD S. GLICK, D.O., AND NORTH PHILADELPHIA REHABILITATION CENTER, INC.	:	No. 2073 EDA 2012

Appeal from the Order Entered July 2, 20121
In the Court of Common Pleas of Philadelphia County
Civil Division at No. March Term, 2002, No. 001179

DR. RICHARD S. GLICK, D.O., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PROGRESSIVE NORTHERN INSURANCE COMPANY AND MOUNTAIN LAUREL INSURANCE COMPANY, D/B/A/ PROGRESSIVE INSURANCE COMPANY	:	
APPEAL OF: PROGRESSIVE NORTHERN INSURANCE COMPANY AND MOUNTAIN LAUREL INSURANCE COMPANY	:	No. 2145 EDA 2012

Appeal from the Order Entered July 2, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No. March Term, 2002, No. 001179

BEFORE: BENDER, J., PANELLA, J., and FITZGERALD*, J.

*Former Justice specially assigned to the Superior Court.

MEMORANDUM BY BENDER, J.: **FILED January 24, 2014**

In this class action, Progressive Northern Insurance Company and Mountain Laurel Insurance Company, doing business as Progressive Insurance Company (Progressive), appeal from the trial court's July 2, 2012 order entered pursuant to Pa.R.A.P. 341 (b)(3) and (c). Richard S. Glick, D.O., as representative of a class of medical provider plaintiffs (the Providers) cross-appeals. At issue are five interlocutory orders dated October 1, 2003 (granting class certification); April 14, 2009 (granting the Providers partial summary judgment on the issue of liability); June 4, 2009 (denying Progressive's motion for reconsideration); February 11, 2011 (denying Progressive's motion for partial summary judgment on the issue of liability); and April 30, 2012 (denying the Providers' motion for partial summary judgment on the issue of damages and concurrently granting Progressive's cross-motion on the same issue).[1] After review, we reverse the order granting class certification, vacate the remaining orders, and remand with instructions.

Progressive sells auto insurance policies pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701, et seq. (the MVFRL). Glick offers treatment to persons injured in auto accidents.

[1] The parties stipulated as to the amount of class-wide damages and agreed that the stipulated damages accurately reflected the interlocutory orders entered by the trial court. Upon consideration of the parties' stipulation, the trial court certified, upon express determination, in its order dated July 2,

When Glick provides medical services to an injured person, he sends a standardized invoice, known as the HCFA-1500 Form, to Progressive. According to Glick's amended complaint, submission of the HCFA-1500 Form constitutes reasonable proof of the amount of benefits due an injured person covered under a Progressive policy. Nevertheless, according to Glick, Progressive allows the bills to become overdue, eventually remits payment of the principal, but fails to include payment of 12% interest as required by the MVFRL.

Glick sought class certification to recover unpaid interest on all overdue HCFA-1500 bills. The trial court granted certification of the following class:

> [t]he class shall consist of any person, institution, corporation, entity or provider of medical benefits … who has provided and therefore received or is entitled to receive payments for any medical benefits or first party benefits … as those terms are defined in § 1702, § 1711 and § 1712(1), (5) & (6) of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1701 et seq. … arising out of injuries suffered by [Progressive's] insured in motor vehicle accidents, where [Progressive's] payment of such medical benefits are or were "overdue" (as defined in section 1716 of the MVFRL) and [Progressive] have not paid the medical benefits in full because the payments by Progressive did not include 12% per annum interest on such overdue Medical Benefits and/or no payment of Medical Benefits has yet been made or are overdue.

Trial Court Order, 10/1/2003.

2012, that an immediate appeal would facilitate resolution of the entire case. ***See*** Pa. R.A.P. 341(c).

Thereafter, the court granted the Providers partial summary judgment on the issue of liability, concluding that submission of standardized billing forms stating the amounts of charges and a description of services constituted "reasonable proof of the amount of benefits" under the controlling provisions of the MVFRL. Accordingly, the court required that Progressive pay interest at 12% per annum on all amounts not tendered within 30 days of billing, pursuant to MVFRL section 1716, further holding that interest should be calculated beginning from the day on which a bill becomes overdue.

Progressive filed a motion for reconsideration, which was denied. Progressive also filed a motion seeking partial summary judgment on a related issue: whether a standardized invoice filed on behalf of institutional providers such as hospitals, the so-called UB-92 Form, similarly provided sufficient notice of medical benefits. The court denied Progressive's motion. Following the parties' stipulation that an immediate appeal would facilitate resolution of the entire case, the court certified this matter pursuant to Pa.R.A.P. 341(b)(3) and (c). The parties timely appealed and complied with Pa.R.A.P. 1925.

At every stage of this litigation, the parties have essentially agreed that proper resolution of this case hinges on a single issue of statutory construction. Issues of statutory construction are pure questions of law subject to *de novo* review. ***White Deer Twp. V. Napp***, 985 A.2d 745, 754

(Pa. 2009). The scope of our review is plenary. ***Id.*** Regarding the trial court's order granting class certification, we review for an abuse of discretion, defined as "a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." ***Samuel-Bassett v. Kia Motors Am., Inc.***, 34 A.3d 1, 15 (Pa. 2011) (quoting ***In re Cmty. Bank of N. Va.***, 622 F.3d 275, 290 (3d Cir. 2010)).

The statute in dispute, Section 1716 of the MVFRL, provides:

> Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of the benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended.

75 Pa.C.S.A. § 1716. Specifically at issue is the proper interpretation of the phrase, "reasonable proof of the amount of the benefits."

The object of statutory interpretation is to ascertain the intention of the General Assembly in drafting a provision. ***See Day v. Civil Serv. Commm'n of Borough of Carlisle***, 931 A.2d 646, 652 (Pa. 2007) (citing 1 Pa.C.S.A. § 1921(a)). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). "Absent a definition in a statute, statutes are presumed to employ words in their popular and plain everyday

sense, and popular meanings of such words must prevail." ***Commonwealth v. Sanchez-Rodriguez***, 814 A.2d 1234, 1237 (Pa. Super. 2003). "Given that the language of a statute is the best indication of the General Assembly's intentions, there is no need to look beyond the plain meaning of a statute when the words of it are explicit." ***Day***, 931 A.2d at 652 (citing, *e.g.*, ***Colville v. Allegheny Cnty. Ret. Bd.***, 926 A.2d 424, 431 (Pa. 2007); *et al.*).

The Providers argue that the plain language of the MVFRL supports their position. According to them, the HCFA-1500 Form and, alternatively, the UB-92 Form provide exactly what is required under Section 1716. Each form identifies the patient, the insured, the medical provider, the diagnosis, the treatment administered, and the amount charged for the treatment. Progressive counters that the HCFA-1500 Form is not always sufficient to meet the "reasonable proof" requirement of Section 1716, as it fails to resolve questions of coverage, causation, and medical necessity.

The trial court's analysis of this issue was brief, concluding that (1) the language of Section 1716 is clear and unambiguous; (2) the HCFA-1500 bills provide reasonable proof of the amount of the benefits as required by that section; (3) an insurer may challenge the amount of a bill within 30 days by seeking peer review pursuant to MVFRL Section 1797(b)(3); and (4) provided a bill is under peer review, no interest will accrue. The court then applied these conclusions to the evidence submitted on motion, finding that

(1) Progressive received the HCFA-1500 Forms; (2) failed to challenge them; (3) failed to pay within 30 days; and (4) upon payment, failed to pay interest. The court concluded as a matter of law that Progressive was required to pay 12% annual interest on any HCFA-1500 Forms paid more than 30 days after receipt.

Its error was twofold. First, it equated receipt of the form with reasonable proof of the amount of the benefits. There is no support for this in the statutory language. Receipt of the HCFA-1500 Form is merely indicative of treatment and provides prima facie evidence that such treatment was medically justified. It does not establish coverage for such treatment. Whether an insured is entitled to coverage in the form of medical benefits raises additional questions unanswered by mere submission of the form, including causation for example. Glick acknowledged as much by noting his common practice of submitting medical records and insurance claims forms *in addition* to the HCFA-1500 Form. Thus, we conclude that the HCFA-1500 Form is relevant, but not necessarily sufficient evidence of the amount of the benefits.[2]

Second, the court misconstrued the peer review process defined in Section 1797(b). That section provides, in relevant part:

> (b) Peer review plan for challenges to reasonableness and necessity of treatment.--

[2] Our conclusion applies equally to the UB-92 Form.

> (1) Peer review plan.--Insurers shall contract jointly or separately with any peer review organization [(PRO)] established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. *Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary.* An insurer's challenge must be made to a PRO within 90 days of the insurer's receipt of the provider's bill for treatment or services or may be made at any time for continuing treatment or services.

75 Pa.C.S.A. § 1797(b)(1) (emphasis added). Thus, the PRO provides a forum in which to challenge the medical necessity of a treatment administered. It does not permit an insurer to investigate or challenge a bill on other grounds, such as whether a patient lacks coverage under a Progressive policy, whether a patient's injuries resulted from a motor vehicle accident, or whether a patient may be entitled to coverage under a different insurer's policy. ***See, e.g., Kuropatwa v. State Farm Ins. Co.***, 721 A.2d 1067, 1071 (Pa. 1998).

According to Progressive, the absence of a definition for "reasonable proof" in Section 1716 renders it ambiguous, and it has offered extensive analysis in support of this contention. We are not persuaded, though not because its analysis is flawed so much as unnecessary. In our view, the language employed by the General Assembly merely evinces a recognition that what will constitute "reasonable proof" is a question of fact answered on a case by case basis after review of relevant evidence addressing several

factors, including coverage, causation, and medical necessity.[3] Other jurisdictions considering Section 1716 or similar statutory language have come to the same conclusion. ***See, e.g., Roche v. New Jersey Mfrs. Ins. Co.***, 78 F.App'x 183, 186 (3d Cir. 2003) ("[Under Section 1716], [t]he determination of when [an insurer] received reasonable proof of the amount of the benefits due is one of fact."); ***Klein v. State Farm Mut. Auto. Ins. Co.***, 948 P.2d 43, 48 (Colo. App. 1997) ("Whether ... reasonable proof was received is for the fact finder.").

This factual inquiry requires individualized determinations not readily suitable for class action. ***See Basile v. H & R Block, Inc.***, 52 A.3d 1202, 1211 (Pa. 2012) (noting that despite "the tendency toward sanctioning the use of class actions as a convenience to address colorably meritorious claims in an aggregate fashion," discrete, fact-intensive inquiries are "not amenable to class treatment"); ***see also*** Pa. R.C.P. 1702(2) (requiring "questions of law or fact common to the class"). Accordingly, we revoke the Providers' class certification. ***Basile***, 52 A.3d at 1212; ***see also Samuel-Bassett***, 34 A.3d at 16 (noting that class certification may be revoked if the preliminary conclusions of merits issues are found erroneous) (citing ***In re Hydrogen Peroxide Antitrust Litig.***, 552 F.3d 305, 320 n. 22 (3d Cir. 2008). On

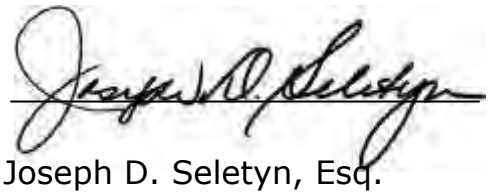
[3] We observe that "reasonable" is defined as "[f]air, proper, moderate under the circumstances." BLACK'S LAW DICTIONARY, 1379 (9th ed. 2009). "Proof" is defined as "[t]he establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence on the mind of a fact-finder." ***Id.*** 1334 (9th ed. 2009).

remand, Glick may pursue his claims on an individual basis. ***See Alessandro v. State Farm Mut. Auto. Ins. Co.***, 409 A.2d 347, 350 n.9 (Pa. 1979); Pa. R.C.P. 1710(e).

Order of October 1, 2003, reversed. Order of April 14, 2009, vacated. Order of June 4, 2009, vacated. Order of February 11, 2011, vacated. Order of April 30, 2012, vacated. Case remanded. Jurisdiction relinquished.

Judge Panella files a dissenting statement.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/24/2014