

Westchester Med. Ctr. v Progressive Cas. Ins. Co.

2009 NY Slip Op 32004(U)

August 19, 2009

Supreme Court, Nassau County

Docket Number: 18516/08

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

WESTCHESTER MEDICAL CENTER a/a/o
GREGORIA YOUNG, LOICYRA BULADO,
a/k/a LOICYRA ALMEDA, ANTHONY
PRUNELLA,

Plaintiffs,

- against -

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Defendant.

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 18516/08

Motion Sequence No. 001, 002

AMENDED

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>4</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The prior order of this court dated May 28, 2009 addressing the motion by the plaintiffs for summary judgment and the cross-motion by the defendant for summary judgment (Motion Sequences 001 and 002) is amended *sua sponde* by the court. This is an action to recover no-fault medical benefits.

The cross-motion by the defendant for summary judgment is granted in its entirety.

The first cause of action pertains to the plaintiff's claim as assignee for health services rendered to Gregoria Young. Plaintiff asserts it mailed a Hospital Facility Form and a UB-04 for payment of a hospital bill in the amount of \$16,529.98 to the defendant on August 11,

2008 and it was received by the defendant on August 13, 2008. Plaintiff alleges the defendant failed to either pay the hospital bill or to issue a Denial of Claim Form. Plaintiff further asserts the defendant is precluded from interposing a defense to the action.

The second cause of action pertains to the plaintiff's claim as assignee for health services rendered to Loicyra Bulado a/k/a Loicyra Almeda. Plaintiff asserts it mailed a Hospital Facility Form and a UB-04 for payment of a hospital bill in the amount of \$5,484.62 to the defendant on August 18, 2008 and it was received by the defendant on August 20, 2008. Plaintiff asserts the defendant failed to either pay the hospital bill or to issue a timely Denial of Claim. Plaintiff states the complete medical records on the hospital admission of Loicyra Bulado a/k/a Loicyra Almeda were mailed to defendant on November 25, 2008 and were delivered to defendant on November 28, 2008. Plaintiff asserts the lab results were mailed to the defendant on November 12, 2008. Plaintiff asserts the defendant issued an untimely defective denial of claim dated December 23, 2008.

The third cause of action pertaining to the claim as assignee for health services rendered to Anthony Prunella. Plaintiff asserts it mailed a Hospital Facility Form and a UB-04 for payment a hospital bill in the amount of \$4,682.24 to the defendant on August 6, 2008 and it was received by the defendant on August 11, 2008. The plaintiff asserts the defendant issued an untimely Denial of Claim dated November 7, 2008 and paid \$4, 682.39 on November 13, 2008 which was untimely. Plaintiff moves for summary judgment on this cause of action for statutory interest and attorneys fees.

In support of its motion for summary judgment, the plaintiff demonstrated its prima

facie entitlement to judgment as a matter of law by submitting, inter alia, the requisite billing forms, the affidavits from its billers, as well as the certified mail receipts, and the signed return receipt cards which referenced the patients and the forms (see *New York & Presbyt. Hosp. v Travelers Prop. Cas. Ins. Co.*, 37 AD3d 683 [2007]; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 34 AD3d 532 [2006]; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 30 AD3d 492, 493 [2006]). This evidence demonstrated that the defendant received proof of the claims and failed to pay the bills or issue a denial of claim form within the requisite 30-day period (see Insurance Law § 5106 [a]; 11 NYCRR 65-3.8 [a]).

In response to the claim as assignee for health services rendered to Gregoria Young defendant asserts it received the billing from the plaintiff on August 13, 2008 and on August 19, 2008, Lee M. Kupersmith, M.D., an orthopedist, completed a affirmed peer review medical report in which he rendered a medical opinion that, based upon a review of the plaintiff's medical records from before and after the motor vehicle accident of January 2, 2008, that the causal relationship between the surgery and testing of the plaintiff and the motor vehicle accident was not established. The defendant claims that on August 26, 2008 a denial of claim form NF-10 was generated and mailed in duplicate to the plaintiff in the regular course of business.

In reply the plaintiff asserts that defendant's doctor did not demonstrate any background in orthopedics and was not qualified to comment on the causal relationship between the plaintiff's surgery and the motor vehicle accident; that the defendant's doctor did not examine the plaintiff; that his reliance on unproduced notes and report of other

reports is hearsay; and the reports submitted are not in admissible form. The plaintiff also submitted a one page unsigned report from Andrew Moulton, M.D., the attending surgeon at Westchester Medical Center entitled Operative Indicators in which he opines that as a result of the motor vehicle accident the plaintiff has been suffering from radiculopathy in her bilateral upper extremities and a occasionally sense of instability to her feet. Also submitted in reply is a letter from Dr. Moulton dated February 29, 2008 to Wen Hui, M.D. wherein he relates the plaintiff's medical history, his impressions of the plaintiff's condition following the motor vehicle accident and opines his impression is spinal cord and nerve spinal cord compression. Both documents are un-affirmed.

First, the court finds the denial of claim dated August 26, 2008 by the defendant was timely made within the 30 day time period pursuant to 11 NYCRR 65.15[d]. Proof of proper mailing gives rise to a presumption that the item was received by the addressee and that presumption may be created by a standard of office practice designed to ensure that items are properly addressed and mailed. Here, the defendant submitted to affidavit of its Personal Injury Protection Litigation Representative (PIP) who stated he was personally and fully familiar with the defendant's claim handling and mailing procedures, (see, *Residential Holding Corp. v Scottsdale Ins. Co.*, 286 A.D. 2d 679).

Defendant's peer review report established prima facie that there was no medical necessity for the services provided by plaintiff. Some of the medical reports relied upon by the defendant's doctor were prepared by plaintiff and plaintiff can not challenge the reliability of its own medical records (see, *Cross Cont. Med., P.C. v Allstate Ins. Co.* 13 Misc

3d 10). The plaintiff has failed to submit evidence in admissible form to rebut the showing of the defendant.

Summary judgment is a drastic remedy that is awarded only when it is clear that no triable issue of fact exists (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 325; *Andre v. Pomeroy*, 35 N.Y.2d 361). Accordingly, the defendant is entitled to summary as to the first cause of action.

In response to the second cause of action the defendant asserts on August 20, 2008 it received a bill in the amount of \$5,484.62. On September 2, 2008, in the regular course of business, a verification request for copies of the emergency room records, all laboratory test results and a recorded statement from the claimant was mailed to the Westchester Medical Center. A response was not received from plaintiff and a second verification request was mailed to Westchester Medical Center on October 6, 2008. The records and laboratory reports were received on November 14, 2008. The defendant argues the claim has not been fully verified and the claimant has not appeared for a recorded statement and the cause of action should be dismissed as premature.

In *New York & Presbyterian Hosp. v Progressive Cas. Ins. Co.*, 5 A.D.3d 568, the court clearly defined the law as to the time deadlines and procedures for the handling of no fault benefit claims in holding:

The Insurance Law and regulations promulgated thereunder provide that “[w]ithin 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part” (11 NYCRR 65.15 [g] [3]; see Insurance Law § 5106 [a]). This 30-day period may be extended by, inter alia, a timely demand by the insurance company for further verification of a claim

(see 11 NYCRR 65.15 [d] [1]; [e]). Such a demand must be *570 made within 10 days of receipt of a completed application (see 11 NYCRR 65.15 [d] [1]). If the demanded verification is not received within 30 days, the insurance company must issue a follow-up request within 10 days of the insured's failure to respond (see 11 NYCRR 65.15 [e] [2]). A claim need not be paid or denied until all demanded verification is provided (see 11 NYCRR 65.15 [g] [1] [i]; *Westchester County Med. Ctr. v New York Cent. Mut. Fire Ins. Co.*, 262 AD2d 553, 554 [1999]). When a hospital fails to respond to a verification request, the 30-day period in which to pay or deny the claim does not begin to run, and any claim for payment by the hospital is premature (see *St. Vincent's Hosp. of Richmond v American Tr. Ins. Co.*, 299 AD2d 338, 340 [2002]; *Nyack Hosp. v Progressive Cas. Ins. Co.*, 296 AD2d 482, 483 [2002]; *New York Hosp. Med. Ctr. of Queens v State Farm Mut. Auto. Ins. Co.*, 293 AD2d 588, 590 [2002]). No-fault benefits are overdue, however, if not paid within 30 calendar days after the insurer receives verification of all of the relevant information requested pursuant to 11 NYCRR 65.15 (d) (see 11 NYCRR 65.15 [g] [1] [i]; *New York Hosp. Med. Ctr. of Queens v Country-Wide Ins. Co.*, 295 AD2d 583, 584 [2002])

Accordingly, the court finds the verification request was timely made by the defendant the 30 day period within which the defendant was required to either pay or deny the claim did not begin to run.

Therefore, the defendant is granted summary judgment as to the second cause of action and that claim is dismissed as premature (see, *Mount Sinai Hosp. v Chubb Group of Ins. Companies*, 43 A. D. 3d 889).

In response the third cause of action the defendant asserts on August 11, 2008 it received a bill in the amount of \$4,682.24. On August 21, 2008 a verification request was mailed to plaintiff in the regular course of business. On August, 25, 2008 the defendant received emergency room records. On September 9, 2008 it sent a verification request delaying all benefits pending receipt of a police report. A second request was mailed on

October 9, 2008. The police report was received on October 17, 2008. The bill was paid in full on November 8, 2008 within 30 days of receipt of the police report. The defendant asserts the claim was not overdue when the lawsuit was commenced and should be dismissed as premature. The Court finds that the plaintiff's failure to provide the information requested rendered the claims incomplete (see, *Westchester Medical Center v. Progressive Casualty Ins. Co.*, 46 A.D.3d 675 (2nd Dept., 2007)). Accordingly, the defendant is granted summary judgment as to the third cause of action.

The cross-motion by the defendant for summary judgment is granted in its entirety. The motion for summary judgment by the plaintiff is denied.

So ordered.

Dated: August 19, 2009

ENTER:



J. S. C.

ENTERED

FINAL DISPOSITION XXX

NON FINAL DISPOSITION

AUG 25 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**