

## SUPREME COURT OF PENNSYLVANIA

# Freedom Medical Supply, Inc. v. State Farm Fire and Casualty Co.

635 Pa. 86 (Pa. 2016) · No. 8 EAP 2015 · Decided February 16, 2016

### SUMMARY

The Supreme Court of Pennsylvania answered a certified question concerning how insurers must calculate the usual and customary charge for medical products not listed on the Medicare fee schedule under the Motor Vehicle Financial Responsibility Law. The Court held that 31 Pa. Code § 69.43(c) permits, but does not require, insurers to use the provider's billed amount or data collected by Medicare carriers or intermediaries, provided the calculation otherwise complies with applicable law and regulations.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                               |
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| COURT                 | Supreme Court of Pennsylvania                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Justice Todd; Chief Justice Saylor; Justice Eakin; Justice Baer; Justice Donohue; Justice Dougherty; Justice Wecht                                                                                                                                                            |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                  |
| DECIDED               | February 16, 2016                                                                                                                                                                                                                                                             |
| DOCKET                | 8 EAP 2015                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | The Supreme Court of Pennsylvania answered a certified question of Pennsylvania law from the United States Court of Appeals for the Third Circuit concerning interpretation of the Pennsylvania Motor Vehicle Financial Responsibility Law and related insurance regulations. |
| STANDARD OF REVIEW    | De novo review with plenary scope for the certified question, which presented a pure question of statutory and regulatory interpretation.                                                                                                                                     |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                |
| PARTIES               | Freedom Medical Supply, Inc., individually and on behalf of all others similarly situated v. State Farm Fire and Casualty Company, State Farm Mutual Automobile Insurance Company                                                                                             |

### TOPICS

insurance

medicare medicaid

statutory interpretation

plain meaning rule

appellate jurisdiction

## PRACTICE AREAS

insurance

health law

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether an insurer may use methods not specifically identified in the Pennsylvania Motor Vehicle Financial Responsibility Law or 31 Pa. Code § 69.43(c) to calculate the usual and customary charge for medical devices and services not listed on the Medicare fee schedule.

## HOLDINGS

1. Section 69.43(c) permits, but does not require, an insurer to calculate reimbursement using the provider's requested payment amount or data collected by Medicare carriers or intermediaries. An insurer may use other methods consistent with the MVFRL and the regulatory definition of a usual and customary charge.

## KEY QUOTATIONS

*“After careful review, we hold that it permits, but does not require, insurers to do so.”* ([J-19-2016] - 2)

*“In light of the foregoing, and in answer to the question submitted, we hold that Section 69.43(c) permits, but does not require, that reimbursements be calculated predicated on the provider’s bill for services or the data collected by the carrier.”* ([J-19-2016] - 13)

## FACTUAL BACKGROUND

From 2010 to 2012, Freedom supplied electrical muscle stimulators and portable whirlpools to automobile-accident victims insured by State Farm. The products had no federally determined Medicare fee, and Freedom sought reimbursement based on charges substantially marked up from its purchase prices. State Farm independently researched prices charged by other providers and paid 80 percent of its calculated usual and customary charges rather than 80 percent of Freedom's billed amounts.

## PROCEDURAL HISTORY

Freedom filed a class action in the Philadelphia County Court of Common Pleas challenging State Farm's calculation of reimbursement for medical products not listed on the Medicare fee schedule. State Farm removed the action to the Eastern District of Pennsylvania, which granted State Farm summary judgment. On appeal, the Third Circuit certified a question of Pennsylvania statutory and regulatory interpretation to the Pennsylvania Supreme Court.

## DISPOSITION

other

## REMAND INSTRUCTIONS

The certified question was answered, and jurisdiction was relinquished. No remand instructions were issued.

## CASES CITED

- Bowling v. Office of Open Records, 75 A.3d 453, 466 (Pa. 2013)
- Commonwealth, Office of Governor v. Donahue, 98 A.3d 1223, 1237 (Pa. 2014)
- Meyer v. Community College of Beaver County, 93 A.3d 806, 814 (Pa. 2014)
- Pittsburgh Neurosurgery Associates, Inc. v. Danner, 733 A.2d 1279, 1282 (Pa. Super. Ct. 1999)
- Sturkie v. Erie Insurance Co., 595 A.2d 152 (Pa. Super. Ct. 1991)
- Hospital Association, Inc. v. Foster, 629 A.2d 1055 (Pa. Cmwlt. 1993)
- Freedom Medical Supply, Inc. v. State Farm Fire & Casualty Co., 2014 WL 626430 (E.D. Pa. Feb. 18, 2014)

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