

SUPREME COURT OF OREGON

Grisby v. Progressive Preferred Insurance Co., 343 Or. 175

166 P.3d 519 (2007) · No. SC S054196 · Decided August 9, 2007

SUMMARY

The Oregon Supreme Court held that an insured who prevailed in an action against an insurer for personal injury protection benefits was entitled to attorney fees under ORS 742.061(1). The statutory exception for PIP actions did not apply because the insurer had denied coverage of the particular chiropractic services and the dispute involved more than only the amount of benefits due. The court reversed the Court of Appeals and the circuit court and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	August 9, 2007
DOCKET	SC S054196
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the Court of Appeals' decision affirming the circuit court's denial of attorney fees after plaintiff prevailed at trial in an action for PIP benefits.
STANDARD OF REVIEW	Statutory interpretation reviewed as a question of law.
PRECEDENTIAL VALUE	Published opinion; precedential Oregon Supreme Court decision.
PARTIES	Omar J. Grisby v. Progressive Preferred Insurance Company

TOPICS

- insurance coverage
- statutory interpretation
- remedies
- appellate procedure

PRACTICE AREAS

- Insurance law
- Oregon statutory interpretation
- Attorney fees

QUESTIONS PRESENTED

1. Whether Progressive had accepted coverage of the disputed chiropractic-treatment claim within the meaning of ORS 742.061(2)(a).
2. Whether the dispute over whether the chiropractic treatment was related to the accident constituted an action in which the only issue was the amount of benefits due the insured under ORS 742.061(2)(a).
3. Whether Grisby was entitled to a reasonable attorney fee under ORS 742.061(1).

HOLDINGS

1. An insurer does not accept coverage for purposes of ORS 742.061(2)(a) merely by acknowledging that an accident falls within the policy; acceptance or denial must be evaluated with respect to the particular claim for services. Because Progressive denied the chiropractor's claim, it had not accepted coverage of that claim.
2. A dispute over whether a particular medical treatment is related to the insured's accident and therefore covered is not merely a dispute over the amount of benefits due under ORS 742.061(2)(a). The phrase 'amount of benefits' refers to the dollar level or quantum of a claim, while a denial of a particular claim is a distinct issue.
3. Because Progressive had not accepted coverage of the disputed claim and the action involved more than the amount of benefits, the ORS 742.061(2)(a) exception did not apply. Grisby was entitled to recover a reasonable attorney fee under ORS 742.061(1), assuming the statute's other requirements were satisfied.

KEY QUOTATIONS

“By that reasoning, however, every dispute about an insurance benefit-including whether a policy was in effect and the relationship between a claimed expense and the insured's accident, as well as disputes about the necessity and reasonableness of the provider's charge-is a dispute about the "amount of benefits.”” (at 523)

“By distinguishing between those two kinds of disputes, the PIP statute indicates that the "amount" of benefits is something different from the "denial" of benefits.” (at 524)

FACTUAL BACKGROUND

Grisby was injured in an automobile accident and submitted claims for personal injury protection benefits to Progressive. Progressive accepted that the accident fell within the policy but denied payment for certain chiropractic treatment on the ground that the treatment was unrelated to the accident. After arbitration favored Progressive, a jury in Grisby's trial de novo action found the treatment related to the accident, and Grisby sought attorney fees.

PROCEDURAL HISTORY

After an arbitrator ruled for Progressive on its denial of payment for chiropractic treatment, Grisby filed an action for a trial de novo. A jury found that the treatment was related to the accident, and the circuit court entered judgment for Grisby but denied his request for attorney fees under ORS 742.061(1), concluding that the exception in ORS 742.061(2)(a) applied. The Court of Appeals affirmed. The Oregon Supreme Court allowed review, reversed the Court of Appeals and the circuit court's supplemental judgment, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings, including proceedings consistent with Grisby's entitlement to a reasonable attorney fee.

CASES CITED

- Grisby v. Progressive Preferred Ins. Co., 207 Or. App. 592, 142 P.3d 531 (2006)
- Foltz v. State Farm Mutual Auto. Ins. Co., 326 Or. 294, 952 P.2d 1012 (1998)
- Wetherell v. Douglas County, 342 Or. 666, 160 P.3d 614 (2007)

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