DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Progressive Select Insurance Company v. In House Diagnostic Services, Inc., a/a/o Darryl Frazier

No. 4D21-2581 · No. 4D21-2581 · Decided April 26, 2023

SUMMARY

The Florida Fourth District Court of Appeal held that reimbursement for the imaging services at issue under Florida's personal injury protection statute should be calculated using the lower 2007 Medicare Part B non-facility participating price rather than the higher limiting charge. The court receded from its prior decision in Allstate Fire & Casualty Insurance Co. v. Jeffrey L. Katzell, M.D., P.A., and certified conflict with the Third District's decision in Priority Medical Centers, LLC v. Allstate Insurance Co. The court reversed the provider's summary judgment and remanded with instructions to enter summary judgment for the insurer.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Artau, J.; Klingensmith, C.J.; Warner, J.; Gross, J.; May, J.; Damoorgian, J.; Ciklin, J.; Gerber, J.; Levine, J.; Conner, J.; Forst, J.; Kuntz, J.
JURISDICTION	Florida
DECIDED	April 26, 2023
DOCKET	4D21-2581
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from cross-motions for summary judgment in a PIP reimbursement dispute. The insurer appealed the county court's summary judgment for the imaging-services provider.
STANDARD OF REVIEW	De novo review of summary judgment and the interpretation of section 627.736(5)(a), Florida Statutes.
PRECEDENTIAL VALUE	Published en banc decision; binding precedent in the Florida Fourth District and conflict-certified with the Third District's contrary decision in Priority Medical.

PARTIES Progressive Select Insurance Company v. In House Diagnostic Services, Inc., a/a/o Darryl Frazier

TOPICS

insurance coverage · statutory interpretation · appellate procedure · legislative intent

PRACTICE AREAS

Insurance law · Personal injury protection insurance · Statutory interpretation · Appellate procedure

QUESTIONS PRESENTED

1. Whether section 627.736(5)(a), Florida Statutes (2013), permits a PIP insurer calculating reimbursement for imaging services to use the higher 2007 Medicare Part B non-facility limiting charge rather than the lower participating price.
2. Whether the Fourth District should recede from Allstate Fire & Casualty Insurance Co. v. Jeffrey L. Katzell, M.D., P.A., which adopted the contrary reasoning of Priority Medical Centers, LLC v. Allstate Insurance Co.
3. Whether the county court's summary judgment for the provider should be reversed and the matter remanded for entry of judgment for the insurer.

HOLDINGS

1. Under section 627.736(5)(a), Florida Statutes (2013), the reimbursement rate for the imaging services was properly calculated using the lower 2007 Medicare Part B non-facility participating price, not the higher non-facility limiting charge.
2. A Medicare Part B limiting charge is not a fee schedule for purposes of calculating reimbursement under Florida's PIP statute; it is the maximum amount a nonparticipating provider may directly charge a Medicare beneficiary in specified circumstances.
3. The en banc court receded from Katzell because it was wrongly decided and certified conflict with Priority Medical.

KEY QUOTATIONS

> *"We conclude that the reimbursement rate for the provided imaging services should have been calculated using the lower 2007 Medicare Part B non-facility participating price rather than the higher 2007 Medicare Part B non-facility limiting charge."* (at 1)

> *"We therefore recede from Katzell and reverse the trial court's summary judgment. We also certify conflict with Priority Medical."* (at 7)

> *"On remand, the trial court is instructed to enter summary judgment in the insurer's favor and consistent with this opinion."* (at 7)

FACTUAL BACKGROUND

Following Darryl Frazier's 2014 automobile accident, In House Diagnostic Services provided diagnostic X-ray imaging services and pursued payment as Frazier's assignee under Progressive's PIP coverage. Progressive reimbursed the provider using the lower 2007 Medicare Part B non-facility participating price. The provider sought the difference between that amount and the higher non-facility limiting charge. The parties stipulated that no material facts were disputed.

PROCEDURAL HISTORY

The provider, as the insured's assignee, sued Progressive for additional reimbursement for diagnostic X-ray services under the policy's PIP provisions. The parties agreed that no material facts were disputed and that the case presented only a legal statutory-interpretation question. Relying on Priority Medical and Katzell, the county court entered summary judgment for the provider based on the higher Medicare Part B limiting charge. The Fourth District, sitting en banc, reversed and remanded with instructions to enter summary judgment for the insurer.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must enter summary judgment in favor of Progressive, consistent with the opinion.

CASES CITED

- Allstate Fire & Casualty Insurance Co. v. Jeffrey L. Katzell, M.D., P.A., 323 So. 3d 191 (Fla. 4th DCA 2021)
- Priority Medical Centers, LLC v. Allstate Insurance Co., 319 So. 3d 724 (Fla. 3d DCA 2021)
