SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

6.22.05

# Food Costs are Not An Allowable Expense Under The No-Fault Act

By John H. Cowley, Jr.

The Michigan Supreme Court in *Griffith v State Farm Mutual Insurance Co.,* _____ Mich _____, released for publication June 14, 2005, reversed the Court of Appeals decision which held that the cost of food was an "allowable expense" under MCLA 500.3107(1)(a) of the Michigan No-Fault Act. This case has far wider implications based upon the dicta in the majority opinion. The only issue on appeal, however, was whether food costs in a non-institutional setting were an "allowable expense" under the no-fault statute.

Griffith sustained a severe brain injury in a motor vehicle accident that occurred on April 28, 1994. He was rendered totally disabled and required constant monitoring, care and assistance with aspects of daily living. For 15 months after the accident, Griffith received inpatient treatment in hospitals and rehabilitation facilities. From August 1995 through August 1997, Griffith resided in a modified apartment receiving continuous care. On August 6, 1997, Griffith returned to his home where attendant care was provided.

Defendant State Farm paid Griffith's medical expenses, including those incurred for food, while he resided in the modified apartment. After Griffith returned home, a dispute arose over State Farm's obligation to pay for various modifications to his home and significant other expenses including his food. The trial court ruled that the cost of Griffith's food was an "allowable expense" under MCLA 500.3107(1)(a). The only issue on appeal was whether the cost of Griffith's food was an "allowable expense." The Court of Appeals, in an unpublished decision relying on *Reed v Citizens Insurance Company,* 198 Mich App 443 (1993), upheld the trial court's ruling that the cost of Griffith's food was an "allowable expense" under the Michigan No-Fault Statute.

## SECREST WARDLE NOTES:

The *Griffith* decision by the Court of Appeals, was featured in the 5/25/04 *No-Fault Newsline.* At that time, we suggested that the Supreme Court may utilize this case to limit or reverse previous decisions in this area. The Supreme Court has done that in this 4 to 3 decision, holding that food outside a hospital is not a reasonable and necessary expense. Although dicta, it appears that the majority of the Court would rule that room and board expenses are not compensable under the Michigan No-Fault Statute.

In a 4-3 decision, the majority of the Supreme Court held that food costs in an institutional setting are benefits for accidental bodily injury and/or reasonably necessary products, services and accommodations for a person's care, recovery or rehabilitation. It is "reasonably necessary" for an insured to consume hospital food during inpatient treatment given the limited dining options available. Although an injured person would need to consume food regardless of his injuries, he would not need to eat that particular food or bear the cost associated with it. Thus, hospital food is analogous to a type of special diet or select diet necessary for an injured person's recovery. Once an injured person leaves the institutional setting, however, he or she may resume eating a normal diet just as if they had not suffered an injury and are no longer required to bear the cost of hospital food which is a part of the unqualified unit cost of hospital treatment.

The Supreme Court specifically overruled *Reed* and used a causation test based upon MCL 500.3105(1) and MCL 500.3107(1)(a). First, such expenses must be "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle…" MCLA 500.3105(1). Second, these expenses must be reasonably necessary for an injured person's care, recovery or rehabilitation… MCL 500.3107(1)(a). Accordingly, no-fault insurers are liable to pay benefits only to the extent that the claimed benefits or costs are connected to the accidental bodily injury arising out of an automobile accident.

It is not any bodily injury that triggers an insurers' liability under the No-Fault Act. Rather, it is only those injuries that are caused by the insured's use of a motor vehicle. In the Supreme Court's analysis, the first causal connection posed a problem for the Plaintiff. Plaintiff did not claim her husband's diet is different from that of an uninjured person, that his food expenses are part of his treatment plan, or that those costs are related in any way to his injuries. Instead, Plaintiff claimed that Griffith's insurer is liable for ordinary, every day food expenses.

The majority could have ended its analysis at that point but went on to discuss section 3107(1)(a), advising that an insurer is liable only for the cost of "products, services and accommodations reasonably necessary for an injured person's care, recovery or rehabilitation." There is no dispute that Griffith is an injured person. Thus, the question is whether food is reasonably necessary for his care, recovery or rehabilitation as an injured person. The key issue according to the majority opinion is whether the food

## CONTINUED...

expenses are necessary for Griffith's care. The majority embarked on a review of the definitional terms of care, recovery and rehabilitation concluding that the Legislature intended to limit the scope of the term "care" to expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident.

The Court went on to cite an example that the cost associated with setting a broken leg would be compensable under the term "recovery" because it is necessary to return a person to his pre-injury health, and the cost of learning to walk on a prosthetic leg would be recoverable under the term "rehabilitation" because it is necessary to bring the person back to a condition of productive activity. Similarly, the cost of such items as a prosthetic leg or special shoes would be recoverable under the term "care" even if the person will never recover or be rehabilitated from the injuries because the costs associated with such products or accommodations stem from the injury. The majority held:

> Griffith's food costs are not related to his care, recovery or rehabilitation. There has been no evidence introduced that he now requires different food than he did before sustaining his injuries as part of his treatment plan. While such expenses are no doubt necessary for his survival, they are not necessary for his recovery or rehabilitation from the injuries suffered in the accident, nor are they necessary for his care because of the injuries he sustained in the accident. Unlike prescription medication or nursing care, the food that Griffith consumes is simply an ordinary means of sustenance rather than a treatment for his "care, recovery or rehabilitation." In fact, if Griffith had never sustained or were to fully recover from his injuries, his dietary needs would be no different than they are now.
>
> The Court held that his food costs are completely unrelated to his care, recovery, or rehabilitation and are not allowable expenses under MCL 500.3107(1)(a).

The majority opinion asked rhetorical questions which are a good indication as to possible future limitations of no-fault benefits that have previously been taken for granted. The majority stated:

> Under Plaintiff's reasoning, because a hospital provided Griffith with clothing while he was institutionalized, Defendant should continue to pay for Griffith's closing after he is released. The same could be said of Griffith's toiletry necessities and housing costs. While Griffith was institutionalized, Defendant paid his housing costs. Should Defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries? Under Plaintiff's reasoning, nothing would prevent no-fault insurers from being obligated to pay for any expenses that an injured person would otherwise be provided in an institutional setting as long as they are remotely related to the person's general care. Plaintiff's interpretation of MCLA 500.3107(1)(a) stretches the language of the Act too far and, incidentally, would largely obliterate cost containment for this mandatory coverage. We have always been cognizant of this potential problem when interpreting the No-Fault Act, and we are no less so today.

There were lively dissents authored by Justices Weaver, Kelly and Cavanaugh. The dissent argued that *Reed* had been properly decided and the Court of Appeals decision allowing food as an allowable expense should be affirmed. Justices Kelly and Cavanaugh acknowledge that the majority's reasoning could have alarming implications. In the dissent, they wrote:

> If we apply the majority's reasoning about in-home food, is shelter at home an allowable expense? An uninjured person requires shelter. The majority incentizes no-fault insurers to refuse to reimburse these and other expenses in the future, even though they are without dispute reasonable and necessary for an injured person's care.

## CONTACT US

**Farmington Hills**
30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

**Mt. Clemens**
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

**Lansing**
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

**Grand Rapids**
1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

**Champaign, IL**
2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

**www.secrestwardle.com**

SECREST SW WARDLE



## CONTRIBUTORS

**Motor Vehicle Litigation Practice Group Chair**
John H. Cowley, Jr.

**Editor**
Carina Carlesimo

We welcome your questions and comments.

## OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newsline, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at **ccarlesimo@secrestwardle.com**, or **248-539-2850**.

**Other newsletters include:**

**Benchmarks** – Navigating the hazards of legal malpractice
**Blueprints –** Mapping legal solutions for the construction industry
**Boundaries –** A guide for property owners and insurers in a litigious society
**Community Watch** – Breaking developments in governmental litigation
**Contingencies –** A guide for dealing with catastrophic property loss
**Fair Use** – Protecting ideas in a competitive world
**In the Margin** – Charting legal trends affecting businesses
**Industry Line** – Managing the hazards of environmental toxic tort litigation
**Landowners' Alert** – Defense strategies for property owners and managers
**On the Beat** – Responding to litigation affecting law enforcement
**On the Job** – Tracking developments in employment law
**Safeguards** – Helping insurers protect their clients
**State of the Art** – Exploring the changing face of product liability
**Structures** – A framework for defending architects and engineers
**Vital Signs** – Diagnosing the changing state of medical malpractice and nursing home liability