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03.06.06

Federal Court Further Limits “Allowable Expenses” Under Michigan No-Fault Scheme

By Brandy Kuretich

In a case pending in the Eastern District of Michigan, Judge Lawrence Zatkoff recently expanded the limitations of no-fault benefits insurance companies are required to pay. *Peabody v. State Farm Mutual Automobile Ins. Co.*, 2005 U.S. Dist. LEXIS 546 (2006). Based on the prior analysis of *Griffith v. State Farm Mutual Automobile Ins. Co.*, the court found claims for room and board, utilities, phone service, cellular phone service, internet access, and cleaning to be non-allowable benefits.

In *Griffith*, a 2005 decision of the Michigan Supreme Court, the plaintiff claimed that defendant insurance company owed personal protection insurance benefits for the cost of food. However, the Michigan Supreme Court held that food was not an allowable expense under the Michigan No-Fault Act and, therefore, the insurance company did not have to reimburse plaintiff for the cost of food. The Michigan Supreme Court’s holding was based on the language of MCL § 500.3107(1)(a) which defines an “allowable expense” as “all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation.” Care, recovery, or rehabilitation expenses have to be necessary for the treatment of injuries sustained in the automobile accident. Since the plaintiff did not require a special diet different from that of an uninjured person, his food expenses did not qualify as an “allowable expense.”

In *Peabody*, plaintiff’s daughter, Jennifer Peabody, had suffered from a closed head injury resulting in mental incapacitation following a car accident in 1987. State Farm paid monthly rent of \$ 575 while Jennifer lived in a rehabilitation center. After six years, Jennifer was moved to a private home bought by her parents, with a monthly rent of \$ 1,500. When State Farm refused to raise their monthly payments, her parents brought suit under the no-fault act claiming that they owed uncompensated portions of room and board, plus monthly payments for utilities, phone service, cellular phone service, internet access, and cleaning.

SECRET WARDLE NOTES:

This case is a victory for insurance companies in that it continues to restrict the amount of benefits payable under Michigan’s No-Fault Statute. It is important to note that as a federal case, it has no precedential value over how Michigan courts can and may rule. However, as is clearly stated by Judge Zatkoff, the Michigan Supreme Court envisioned this type of situation and, if the test they applied in *Griffith* is applied objectively, results similar to that obtained in this case should be forthcoming. *Secret Wardle is proud to have defended State Farm in this victory.*

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The court found that plaintiff could not show that the alleged room and board and other living expenses were related to Jennifer's care, recovery or rehabilitation. The claimed expenses were simply ordinary living expenses that Jennifer would incur regardless of her injury. Therefore, the expenses were not "allowable expenses" and were not compensable under *Griffith*. In fact, Judge Zatkoff's opinion states that this is exactly the type of situation envisioned by the Court in *Griffith*.

The analysis from *Griffith* was correctly applied by the court to include ordinary living expenses other than just food. According to Judge Lawrence Zatkoff, expenses for room and board, as well as other utilities, are not compensable under the No-Fault Act because they do not qualify as "allowable expenses." To qualify as an "allowable expense," the expense must be one that is necessary for the injured person's care, recovery, or rehabilitation from injuries related to the subject motor vehicle accident. Since Jennifer's parents could not show that these ordinary living expenses were related to her injuries arising out of the motor vehicle accident, summary judgment in favor of State Farm, the no-fault insurer, was appropriate.

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We welcome your questions and comments.

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