

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2016AP900186CAXXXMB
L.T. NO.: 2013SC003145XXXXSB

PROGRESSIVE SELECT
INSURANCE COMPANY,
Appellant,

v.

INJURY TREATMENT CENTER OF
BOYNTON BEACH, INC, ASSIGNEE
JEAN GENOVESE,
Appellee.

Opinion filed: MAY 08 2017

Appeal from the County Court in and for Palm Beach County,
Judge Edward Garrison

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PER CURIAM.

Appellant, Progressive Select Insurance Company (“Progressive”), appeals the final judgment entered in favor of Plaintiff/Appellee, Injury Treatment Center of Boynton Beach, Inc. (“Provider”), as assignee of Jean Genovese (“Insured”), after the trial court granted Provider’s Motion for Summary Judgment. On appeal, Progressive argues that the trial court erred in finding

that Progressive's personal injury protection ("PIP") insurance policy clearly and unambiguously invokes the payment schedule in section 627.736(5)(a)2.f., Florida Statutes (2012) (referred to herein as the "permissive reimbursement schedule"). We agree and reverse with instructions for the trial court to enter final summary judgment in favor of Progressive.

Background

Provider rendered medical services to Insured after he sustained injuries in an automobile accident that occurred on October 3, 2012. Insured had an insurance policy with Progressive and assigned the PIP benefits under this policy to Provider. The policy's insuring agreement stated that "Personal Injury Protection Coverage benefits consist of 1. **medical benefits**; 2. **disability benefits**; and 3. **death benefits**." (emphasis in original). The policy then provided a definition of "medical benefits":

ADDITIONAL DEFINITIONS

When used in this Part II(A):

...

4. "**Medical benefits**" means 80% of all reasonable expenses incurred for **medically necessary** medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices and **medically necessary** ambulance, hospital, and nursing services. **Medical benefits** include **medically necessary** remedial treatment and services recognized and permitted under the laws of the State of Florida for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his or her religious beliefs.

(emphasis in original). The policy had previously been amended via an endorsement ("A041 endorsement") prior to the accident to state the following:

Personal Injury Protection Coverage Endorsement

The "Unreasonable or Unnecessary Medical Benefits" provision in Part II(A) is deleted and replaced by the following:

UNREASONABLE OR UNNECESSARY MEDICAL BENEFITS

If an **insured person** incurs **medical benefits** that **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those **medical benefits** and contest them. **We** will determine to be unreasonable any charges incurred that exceed the maximum charges set forth in section 627.736(5)(a)(2)(a through f) of the Florida Motor Vehicle No-Fault Law, as amended. Pursuant to Florida law, **we** will limit reimbursement to, and pay no more than, 80 percent of the following schedule of maximum charges:

- . . .
- f. for all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B. . . .

(emphasis in original).

Of the total amount billed by Provider, Progressive paid a portion of the bill in accordance with the permissive reimbursement schedule. Provider then sued Progressive for further reimbursement. As an affirmative defense, Progressive asserted that it properly reimbursed the services billed pursuant to the permissive reimbursement schedule, and that no further payment was due.

Progressive filed a Motion for Summary Final Judgment, arguing that it properly limited reimbursement, as set forth in the A041 endorsement. In opposition, Provider argued that the insurance policy was ambiguous as to whether Progressive elected the permissive reimbursement schedule. Following a hearing, the trial entered an Order denying Progressive's Motion for Summary Final Judgment.

Provider then filed a Motion for Summary Judgment on Defendant's First Affirmative Defense (Fee Schedules), arguing that Progressive's policy failed to clearly and unambiguously elect the permissive reimbursement schedule. Specifically, Provider argued that the A041 endorsement, when read with the policy's "insuring agreement" and definition of "medical benefits," created an ambiguity as to which payment methodology Progressive elected, i.e. 80% of all reasonable charges pursuant to the terms of the policy, or reimbursements limited to the

permissive reimbursement schedule pursuant to the terms of the endorsement.

Following a hearing, the trial court entered an Order granting Provider's Motion for Partial Summary Judgment and subsequently entered Final Judgment in favor of Provider.

Discussion

We find that the trial court erred by finding that the policy was ambiguous in invoking the permissive reimbursement schedule. In interpreting insurance policies, the Court is bound by the plain meaning of the text. *State Farm Mut. Auto. Ins. Co. v. Menendez*, 70 So. 3d 566, 569 (Fla. 2011). A provision is not ambiguous "simply because it is complex or requires analysis." *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000, 1005 (Fla. 2010) (quoting *Garcia v. Fed. Ins. Co.*, 969 So. 2d 288, 291 (Fla. 2007)). However, "[p]olicy language is considered to be ambiguous . . . if the language is susceptible to more than one reasonable interpretation, one providing coverage and the other limiting coverage." *PCR*, 889 So. 2d at 785 (citations omitted). In such cases, courts will generally "resolve the ambiguity in favor of the insured by adopting the reasonable interpretation of the policy's language that provides coverage as opposed to the reasonable interpretation that would limit coverage." *Id.* at 785–86.

When read together, the policy language and the A041 endorsement do not conflict with one another. As noted *supra*, the policy defines Medical benefits as 80% of all **reasonable** expenses incurred. This is not a payment methodology. The A041 endorsement replaced the "unreasonable or unnecessary medical benefits" section of the policy, stating that Progressive will refuse to pay for medical benefits that are unreasonable or unnecessary and that any charges incurred that exceed the maximum charges of the permissive fee schedule will be deemed unreasonable. The A041 endorsement clearly and unambiguously sets forth the payment methodology: "Pursuant to Florida law, **we** will limit reimbursement to, and pay no more than,

80% of the following schedule of maximum charges” (emphasis in original). Accordingly, the A041 endorsement does not create an ambiguity as to whether Progressive elected the default, reasonableness reimbursement schedule under section 627.736(5)(a)(1) or the permissive reimbursement schedule under section 627.736(5)(a)2.(f).

Therefore, the Court finds that the trial court erred in determining that the policy language was ambiguous as to which payment methodology Progressive elected, and subsequently entering final judgment in Provider’s favor. Accordingly, the decision of the trial court is **REVERSED** and **REMANDED** with directions to grant Progressive’s Motion for Final Summary Judgment and enter judgment in its favor.

Progressive’s Motion for Appellate Attorney’s Fees is **GRANTED**, conditioned on the trial court determining that the proposal for settlement was properly made and submitted and that Progressive is otherwise entitled to fees under section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442.

SASSER, HAFELE, and OFTEDAL, JJ. concur.

PROGRESSIVE SELECT
INSURANCE COMPANY,
Appellant,

Opinion/Decision filed: MAY 08 2017

Appeal from the County Court in and for
Palm Beach County;
Judge Edward Garrison

Appealed: May 27, 2016

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
	With/Without Opinion	With/Without Opinion
5/4/17		
J.	J.	J.
J.	J.	J.
J.	J.	J.