

IN THE COUNTY COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2015-SC-004506-O

MEDICAL HEALTH CHOICE P.A. a/a/o
FRANK BEZERRA,

Plaintiff,

vs.

PROGRESSIVE AMERICAN INSURANCE
COMPANY,

Defendant.

ORDER GRANTING FINAL SUMMARY JUDGMENT

THIS MATTER having come before the Court on Defendant's Motion for Final Judgment and Plaintiff's Response to Defendant's Motion for Final Summary Judgment, having heard arguments of counsel on June 22, 2017, and the Court being otherwise fully advised in its premises, it is **ORDERED AND ADJUGED** as follows:

UNDISPUTED FACTS

1. Frank Bezerra, the assignee, sustained personal injuries in an auto accident on November 13, 2014, for which Medical Health Choice, P.A. ("Plaintiff") rendered treatment from dates of service November 14, 2014 through March 2, 2015. Plaintiff then submitted bills for said treatment to Defendant as Frank Bezerra's insurer. Defendant issued a policy of insurance to Frank Bezerra as named insured, which was in effect from October 23, 2014 through April 23, 2015, and provided ten thousand dollars (\$10,000.00) in Personal Injury Protection ("PIP") benefits, with a one thousand dollar (\$1,000.00) deductible.

2. Only two medical providers submitted bills to Defendant during the course of Frank Bezerra's PIP claim, Plaintiff and Precision Diagnostics, Inc. Defendant ultimately issued \$10,000.00 in total PIP payments divided between the two providers as follows: \$8,342.16 to Plaintiff and \$1,657.16 to Precision Diagnostics, Inc.
3. On March 4, 2015, Plaintiff submitted its first Pre-suit Demand letter to Defendant seeking PIP payments for treatment rendered to Frank Bezerra for the dates of service November 14, 2014 through December 10, 2014.
4. On March 27, 2015, Defendant timely responded to Plaintiff's first Pre-suit Demand letter, issuing an additional payment to Plaintiff for said dates of service.
5. On April 10, 2015, Plaintiff submitted a second Pre-suit Demand letter to Defendant seeking benefits under the same policy but for dates of service December 12, 2015 through February 2, 2015.
6. On April 16, 2015, Plaintiff filed the instant suit against Defendant seeking Personal Injury Protection Benefits for dates of service referenced only in the first Pre-suit Demand Letter, November 14, 2014 through December 10, 2014.
7. On May 13, 2015, Defendant timely responded to Plaintiff's second Pre-suit Demand letter issuing payment for \$2,623.70, which resulted in Defendant reaching its policy limits of \$10,000.00 in PIP benefits. There is no dispute that Plaintiff received this \$2,623.70 draft in response to its second Pre-suit demand, but Plaintiff chose not to deposit the draft.
8. On September 4, 2015, Defendant filed its Motion for Final Summary Judgment based on exhaustion of benefits.

9. On June 19, 2017, Plaintiff filed an Affidavit of Billing Custodian's Corporate Representative in opposition to Defendant's Summary Judgment.
10. On June 20, 2017, Plaintiff also filed a Response to Defendant's Motion for Summary Judgment on Exhaustion of Benefits.

CONCLUSION OF LAW

11. Defendant's Motion for Final Summary Judgment on exhaustion is predicated on the basic idea that Defendant has met its policy limits of \$10,000.00 in PIP payments to the two providers that submitted bills on the instant claim, and that Defendant should not be required to pay more than the amount it has contractually agreed to pay.
12. Plaintiff did not file its own Summary Judgment, but rather, asserts three arguments in response to Defendant's Summary Judgment. Plaintiff argues that benefits have not exhausted because Plaintiff has not deposited the final draft issued to them, that Defendant incorrectly applied the deductible, and that bills were not paid in order of receipt in bad faith.
13. Plaintiff's first argument asserts that benefits have not been exhausted because Plaintiff has not deposited the final draft it received from Defendant in response to Plaintiff's second Pre-suit demand. Plaintiff incorrectly argues that the check must be cashed in order for payment to become effective. This argument is not supported by the clear language of Florida Statute §627.736(10)(d), which provides that "[f]or the purposes of this subsection, *payment* or the insurer's agreement *shall be treated as being made on the date a draft* or other valid instrument that is equivalent to payment, or the insurer's written statement of

agreement, *is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery.*" [Emphasis added]

14. The fact that Plaintiff never deposited the \$2,623.70 draft issued by Defendant, does not mean that there are policy benefits remaining. "Moreover, the argument is akin to arguing that an insurer may float checks -- a practice not permissible under Florida Law." Orthopaedic Center of South Florida, P.A., a/a/o Edward M. Harvey v. USAA Casualty Insurance Company, 17 Fla. Weekly Supp. 1121b.
15. Based on the record evidence before this Court, it is undisputed that Defendant issued and mailed the \$2,623.70 draft to Plaintiff and Plaintiff received said draft. As such, the policy benefits exhausted on the date said draft was mailed.
16. Plaintiff's second argument regarding deductible application also fails. This Court recognizes that the current binding authority regarding deductible application for PIP claims. See Progressive Select Ins. Co. v. Florida Hospital Medical Center, a/a/o Jonathan Parent, 24 Fla. L. Weekly Supp. 318a.
17. However, based on the record evidence before this Court, the deductible application specific to this claim was not relevant because Plaintiff is unable to show any additional benefits owed, regardless of how the deductible was applied. In other words, Plaintiff provided no record evidence that it should or would have received more than the \$8,342.16 in PIP benefits it ultimately received. Thus, Plaintiff has no damages.
18. Likewise, the order Defendant paid bills under this claim is not relevant since Plaintiff provides no record evidence to show it should or would have received more than the \$8,342.16 in PIP benefits it ultimately received. Plaintiff's third argument regarding order of payment is based on an improper application of the

“English Rule.” The Fourth and Fifth District Courts of Appeal have clarified at length that the English Rule has an extremely limited applicability in the PIP context. “We have already noted that the district courts have consistently held that the English rule of priorities, which gives priority to an assignee first giving notice to the creditor, does not apply to PIP payments which are governed by statute.” Northwoods Sports Med. & Physical Rehab., Inc. v. Daniel N., 137 So. 2d 1049, 1054 (Fla. 4th DCA 2014). See also, Progressive Am. Ins. Co. v. Stand-Up MRI, 990 So. 2d 3 (Fla. 5th DCA 2008).

19. In addition, Plaintiff’s assertions of bad faith unsubstantiated as Plaintiff has not filed a civil remedy notice, which is a condition precedent to filing a bad faith action. See Fridman v. Safeco Ins. Co., 185 So. 3 1214 (Fla. 2016).
20. It is a well established principle of law that insurance companies are not required to pay more than the amount it contractually agreed to pay. See Simon v. Progressive Express Ins. Co., 904 So. 2d 449 (Fla. 4th DCA 2005). It is also true that “post-suit exhaustion of benefits should be treated no differently than pre-suit exhaustion of benefits, as long as the benefits’ compensability under PIP has not been established.” Northwoods, 137 So. 2d at 1057 (Fla. 4th DCA 2014).
21. Plaintiff cannot gain more from the insurance company than the contractual benefit amount in the absence of a showing of bad faith on the part of Defendant. GEICO v. Robinson, 581 So.2d 230 (Fla. App. 3rd Dist. 1991); Allstate v. Shilling, 374 So.2d 611 (Fla. App. 4th Dist. 1979); Atkins v. Bellefonte Insurance Co., 342 So.2d 837 (Fla. App. 3rd Dist. 1977); Dixie Insurance Co. v. Lewis, 484 So.2d 89 (Fla. App. 2nd Dist 1986).

22. It is also a well establish principle of law that insurance companies cannot be held liable for extra contractual damages absent showing of bad faith. See Progressive American Ins. Co. v. Stand-Up MRI of Orlando, 990 So. 2d 3 (Fla. 5th DCA 2010).
23. Based on the record evidence presented and the foregoing conclusions of law, Defendant has met its policy limits of \$10,000.00 and benefits are exhausted. Defendant was under contract with the insured for a limited amount of PIP benefits and paid those benefits in total. Defendant fully performed its contractual obligations to the insured, saved no money, and did not gain anything through its actions. Thus, there is no basis to conclude that Defendant should now be forced pay beyond its policy limits.

ACCORDINGLY, Defendant's Motion for Final Summary Judgment based on Exhaustion of Benefits is hereby **GRANTED**. Final judgment is entered for Defendant and against Plaintiff. The court reserves jurisdiction to consider any timely motions to tax costs and attorney's fees if applicable. Plaintiff shall take nothing by this action and Defendant shall go hence without day.

DONE AND ORDERED in Chambers at Orange County Courthouse, Orlando, Florida, on this 30th day of June, 2017.



Honorable Eric H. DuBois

Copies Furnished To:

Hector Muniz, Esquire, Attorney for Defendant
Crystal L. Eiffert, Esquire, Attorney for Plaintiff

Conformed and Mailed

JUN 30 2017

SHERYL SHARP
Judicial Assistant