

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JENNIFER L. SMITH and)	
EDWARD SMITH,)	
)	
Plaintiff,)	
v.)	
)	C.A. No. N12C-10-046 MMJ
DELAINE MAHONEY,)	
NICOLE MARIE RICHARDS, and)	
THEOPHIL M. HOLLIS,)	
)	
Defendants.)	
)	
)	
)	

Submitted: October 16, 2015
Decided: November 20, 2015

Upon Defendant Mahoney’s Motion to Alter or Amend the Judgment
GRANTED in part and DENIED in part

OPINION

Robert C. Collins II, Esq. (Argued), Schwartz & Schwartz, Attorney for Plaintiff

Thomas P. Leff, Esq. (Argued), and Rachel D. Allen, Esq., Casarino Christman Shalk Ransom & Doss, P.A., Attorneys for Defendant Mahoney

Aman K. Sharma, Esq., Chrissinger & Baumberger, Attorney for Defendant Hollis and Defendant Richards

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

On October 5, 2010, plaintiff Jennifer L. Smith (“Plaintiff”) was involved in a motor vehicle accident with defendant Delanie Mahoney (“Mahoney”). Plaintiff subsequently was involved in a second motor vehicle accident with defendant Nicole Marie Richards (“Richards”) on January 6, 2011. Plaintiff was enrolled in Medicaid at the time of the motor vehicle accidents, and continues to be enrolled in Medicaid.

On May 6, 2015, Richards filed a Motion in Limine to limit Plaintiff’s past medical expenses and to strike Plaintiff’s future medical expenses. On May 15, 2015, Mahoney filed a Notice of Joinder with Richards’ Motion in Limine on Plaintiff’s medical expenses. On May 21, 2015, the court denied the Motion.

At trial, Plaintiff introduced a redacted medical bill showing total charges of \$22,911.00, and a \$2,000 bill from MRI Consultants. Plaintiff’s medical expert testified that Plaintiff would require future medical treatment totaling approximately \$3,300 a year. Plaintiff’s doctor’s appointments and prescribed medications were estimated to be approximately \$1,800 a year. Possible injections would cost approximately \$1,500 per injection. The jury was not informed that a portion of the medical bills had been paid by Medicaid, and that the remaining balance was written-off. The Medicaid lien is \$5,197.71.

On June 3, 2015, the jury returned a verdict for Plaintiff in the amount of \$15,000 for pain and suffering, \$24,911 for past medical expenses, and \$10,000 for future medical expenses. On June 17, 2015, Mahoney filed a Motion to Alter or Amend the Judgment regarding Plaintiff's awards for past and future medical expenses.

STANDARD OF REVIEW

“Law courts in Delaware have long had the inherent power to vacate, modify or set aside their judgments or orders during the term in which they were rendered.”¹ To succeed on a Motion to Alter or Amend Judgment,² the moving part must establish one of the following: “(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct clear error of law or to prevent manifest injustice.”³

ANALYSIS

Delaware's Collateral Source Rule

The collateral source rule provides that damages are not reduced by compensation received by the plaintiff from a source independent of the tortfeasor.⁴ The rule balances “two competing principles of tort law: (1) a plaintiff is entitled to compensation sufficient to make [the plaintiff] whole, but no more;

¹ *Tyndall v. Tyndall*, 214 A.2d 124, 125 (Del. 1965).

² Super. Ct. Civ. R. 59(d).

³ *Kostyshyn v. Comm'rs of Town of Bellefonte*, 2007 WL 1241875, at *1 (Del. Super.).

⁴ *Stayton v. Delaware Health Corp.*, 117 A.3d 521, 523 (Del. 2015) (“*Stayton II*”).

and (2) a defendant is liable for all damages that proximately result from [the] wrong.”⁵ Delaware has applied this rule to provider write-offs as well as to independent sources.⁶ The “tortfeasor cannot reduce its damages because of payments or compensations received by the injured person from an independent source.”⁷ The collateral source rule operates to allocate any resulting windfall to the plaintiff, rather than to the defendant.⁸

Defendants’ Contentions

Mahoney contends that, pursuant to Delaware Superior Court Civil Rule 59(d), there has been an intervening change in the controlling law entitling her to an amendment of Plaintiff’s \$24,911 award for past medical expenses. Specifically, Mahoney contends that the award should be reduced to \$5,197.71 - the Medicaid lien for payments made for Plaintiff.

In Richard’s Motion in Limine, Mahoney and Richards (“Defendants”) argued that pursuant to *Stayton v. Delaware Health Corp.*,⁹ the collateral source rule did not apply because Plaintiff’s post-PIP bills were paid by Medicaid. Defendants argued that Plaintiff could only recover the amount that actually was paid by Medicaid. The Court was not persuaded by Defendants’ arguments, and the Motion was denied. However, following this Court’s denial, the Delaware

⁵ *Stayton II*, 117 A.3d at 523.

⁶ *Id.* at 529.

⁷ *Id.* at 527.

⁸ *Id.*

⁹ 2014 WL 4782997 (Del. Super.) (“*Stayton I*”).

Supreme Court affirmed the trial court's decision in *Stayton I*, and held that the collateral source rule did not extend to write-offs from medical bills paid by Medicare.¹⁰ Mahoney contends that this Court must extend *Stayton II* to this case, and reduce Plaintiff's \$24,911 award for past medical expenses to \$5,197.71.

Mahoney also argues that Plaintiff's \$10,000 award for future medical expenses must be vacated as pure speculation because there was no calculation for the deductions that Medicaid would have made. Relying on *Russum v. IPM Development Partnership, LLC*,¹¹ Mahoney seeks to extend *Stayton II* to future medical expenses, arguing that the amount of future medical expenses should be reduced by the amount that would be written-off by Medicaid. To arrive at this amount, Mahoney proposes that expert testimony, and not an estimate based on past Medicaid payments, would be required to make this calculation.

Discussion

Past Medical Expenses

Delaware case law is clear that the collateral source rule does not apply to Medicaid or Medicare write-offs.¹² In *Rice v. The Chimes, Inc.*,¹³ the plaintiff was charged with two hospital bills totaling \$960,000.00. Medicare paid \$59,000 towards one bill, and Medicaid paid \$60,000 towards the other bill. The Court

¹⁰ *Stayton II*, 117 A.3d at 531 (Del. 2015).

¹¹ 2015 WL 4594166 (Del. Super.).

¹² *Rice v. The Chimes, Inc.*, C.A. No. 01-03-260 CLS, at *4 (Del. Super. 2005).

¹³ *Id.*

found that the collateral source rule did not apply to the \$841,000 write-off “since that amount was not paid by any collateral source.”¹⁴ The Court reasoned that the plaintiff was entitled to recover only the \$119,000 that was paid by Medicare and Medicaid because the “[p]laintiff never had and never will incur the remaining expenses.”¹⁵ The issue in *Rice* was application of the collateral source rule to past, not future, medical expenses.

In *Stayton I* and *II*, the plaintiff was a rehabilitation center resident who brought a medical negligence claim against the rehabilitation center for serious burn injuries. The plaintiff’s medical bills totaled \$3,683,797.11. Medicare paid \$262,550.17, and the rest was written-off. The plaintiff contended that she was entitled to the entire billed amount, including the written-off portions of her bills, under the collateral source rule. The defendant argued that the plaintiff should be able to claim only the past medical bills paid by Medicare.

The trial court concluded that Stayton could only recover \$262,550.17, the amount paid by Medicare, and the Delaware Supreme Court affirmed. The Supreme Court held that the collateral source rule applies only to “provider write-offs as benefits conferred on plaintiffs by providers, in the form of services

¹⁴ *Id.* at *3-4.

¹⁵ *Id.* at *4.

gratuitously rendered at a price below the standard rate.”¹⁶ Medicare “provider write-offs are not payments made to or benefits conferred on the injured party.”¹⁷

In accordance with the holdings in *Rice* and *Stayton II*, Plaintiff’s award for past medical expenses shall be reduced to \$5,197.71 - the amount of the Medicaid lien.

Future Medical Expenses

Plaintiff’s medical expert testified that Plaintiff would require future medical treatment totaling \$3,300 a year. Medication and appropriate medical follow-up appointments would cost approximately \$1,800 per year. Cervical spine injections would cost approximately \$1,500 per injection. Plaintiff’s medical expert testified as to the full amount of required future medical treatment, and not Medicaid reimbursement amounts.

In *Stayton II*, the Supreme Court applied the collateral source rule to provider write-offs and third-party payments. The Court distinguished Medicare and Medicaid from third-party payments, but declined to distinguish Medicare and Medicaid from each other. Concerned with speculative or conjectural damages, the Court applied a reasonable probability standard to determine future consequences of tortious injury. The Court held that “a plaintiff cannot recover speculative or conjectural damages because the law ‘refuses to allow a plaintiff

¹⁶ *Stayton II*, 117 A.3d at 527.

¹⁷ *Id.* at 531.

damages relating to the future consequences of a tortious injury unless the proofs establish with reasonable probability the nature and extent of those consequences.”¹⁸

In *Russum*, this Court held that “‘damages relating to future consequences of a tortious injury’ be ‘established with reasonable probability [as to] the nature and extent of those consequences.’”¹⁹ Consequently, expert testimony is required to “account for any appropriate Medicare write-off relating to such projected expenses.”²⁰ However, the *Russum* Court only addressed Medicare, not Medicaid write-offs in the context of future medical expenses.

Relying on *Russum*, Mahoney seeks to extend *Stayton II*. Mahoney argues that Plaintiff’s \$10,000 award for future medical expenses should be vacated as pure speculation.

Policy Considerations

There are substantial differences between Medicare and Medicaid.

Both programs were created by the Social Security Act in 1965. Medicaid (Title XIX) is funded by both the Federal government and State that administers the program. Because of options for coverage, the Medicaid program varies widely from State to State. Medicare (Title XVIII) is a Federally funded and administered health insurance program which has uniform rules, regulations, and benefits in every state.²¹

¹⁸ *Id.* at 534 (quoting *Laskowski v. Wallis*, 205 A.2d 825, 826 (Del. 1964)).

¹⁹ 2015 WL 4594166, at *3 (quoting *Laskowski*, 205 A.2d at 826).

²⁰ *Russum*, 2015 WL 4594166, at *7.

²¹ 16 *Del. Admin. C.* § 13300.

Medicare enrollment is mandatory.²² Eligibility is based on age, permanent disability, and work history.²³ Those conditions are, by definition, immutable. There is a reasonable probability that a person will remain covered by Medicare in the future. A provider that accepts Medicare “cannot seek reimbursement for its medical services from anyone other than Medicare.”²⁴

Medicaid enrollment is optional.²⁵ Eligibility is based on income and resources.²⁶ Medicaid recipients are encouraged to exit Medicaid as soon as possible. It is not uncommon for a Medicaid-eligible recipient to exit Medicaid due to an increase in income or resources, or by obtaining private health insurance coverage. Providers that accept Medicaid must first bill other potential sources of third-party coverage before submitting a bill to Medicaid.²⁷

For purposes of future medical expenses, the Court finds that future Medicaid eligibility is purely speculative and conjectural. Therefore, Plaintiff’s \$10,000 award for future medical expenses will not be reduced by estimates of future Medicaid write-offs. The Court recognizes that the Delaware General Assembly may determine that a contrary result should be enacted by statute.

²² *Stayton II*, 117 A.3d at 523.

²³ 42 U.S.C. § 1395c.

²⁴ *Stayton II*, 117 A.3d at 524 (citing 42 U.S.C. § 1395cc).

²⁵ 16 *Del. Admin. C.* § 14000.

²⁶ 16 *Del. Admin. C.* §§ 13400-70.

²⁷ 42 C.F.R. §§ 433.139, 433.145.

CONCLUSION

Plaintiff's award for past medical expenses shall be reduced to \$5,197.71 - the amount of the Medicaid lien. The collateral source rule applies only to the past amounts actually paid by Medicare or Medicaid. Plaintiff's \$10,000 award for future medical expenses shall not be reduced by any anticipated future Medicaid write-offs. While the collateral source rule applies to the amount of estimated future payments by Medicare, future Medicaid eligibility is speculative and recovery of future medical expenses should not be reduced by estimated Medicaid write-offs.

THEREFORE, Defendants Motion to Alter or Amend the Judgment is hereby **GRANTED IN PART, AND DENIED IN PART**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston