

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

ANTHONY A. MANGENE, SR. )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STATE FARM INSURANCE, )  
 )  
Defendant. )  
 )

C.A. No.: CPU6-13-000307

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Trial: March 30, 2015  
Decided: May 28, 2015

**DECISION AFTER STIPULATED RECORDS TRIAL**

Plaintiff, Anthony A. Mangene, Sr., (“Mangene”) brings this civil action seeking recovery from Defendant, State Farm Insurance, (“State Farm”) under his automobile’s personal injury protection (“no-fault”) insurance policy (“PIP”). Mangene contends that State Farm failed to pay his medical bills that were related to a covered claim. State Farm alleges that the medical bills for which Mangene is attempting to collect are not related to the automobile accident for which it has acknowledged coverage. State Farm acknowledges that Mangene was insured by

State Farm at the time of his accident. The only issue before the Court is whether the medical expenses incurred by Mangene after June 23, 2011, were reasonable and necessary and as a result of the covered automobile accident. Following a stipulated records trial on this matter, the Court enters judgment for Mangene in the amount of \$8,155.00 plus court costs and post judgment interest at the legal rate.

### FACTS

Prior to an automobile accident in which he was involved on November 18, 2010, Mangene worked as a contractor and roofer, specializing in the steepest types of roofs. He suffered injuries as a result of the automobile accident. At the time of his accident, he had PIP coverage with State Farm. When the accident occurred, he was transported by ambulance to the emergency room at Nanticoke Memorial Hospital complaining of pain in his back and his right heel.

As a result of his automobile accident, Mangene went to see his family physician for his injuries. The physician noted that Mangene had pain in his lower back and in his Achilles heel. He prescribed physical therapy for Mangene and referred him to Dr. James Marvel, who was an orthopedic specialist. Mangene attended the physical therapy and noted that after his appointments, the pain in his back would improve for a few days, but, would then return.

Mangene saw Dr. Marvel for treatment. Dr. Marvel diagnosed Mangene with a sprain of his back and "some disruption of the fibers of the insertion of the Achilles tendon in the right heel," and ordered him not to work. Mangene was released to return to work on January 31, 2011, but, was restricted from working at heights or on ladders.

By June 23, 2011, Dr. Marvel was of the opinion that Mangene's injuries had resolved and that Mangene would not need any subsequent treatment. Dr. Marvel released Mangene to

“return to his normal activities with no restrictions.” However, during that period, Mangene was still experiencing some pain in his heel and back. He experienced pain all through the summer of 2011, which caused difficulty sleeping. He took pain medications to enable him to work, but, his pain never went away entirely.

Sometime after the summer of 2011, Mangene went to a lawyer who referred him to another orthopedic specialist, Dr. Richard P. DuShuttle. Dr. DuShuttle commenced treating Mangene in October of 2011. Dr. DuShuttle examined Mangene and determined that he had sustained “a permanent partial impairment of 10% of the lumbar spine and 3% of the right lower extremity.” He also diagnosed Mangene with “multi-level degenerative disc disease lumbar spine,” a “small partial disc herniation,” and a “right Achilles tendon contusion.” In Dr. DuShuttle’s opinion, Mangene’s injuries were “a direct result of the automobile accident which occurred on 11/18/10.” Dr. DuShuttle referred Mangene for an MRI which he obtained on November 4, 2011.<sup>1</sup> The conclusion of the MRI was that Mangene had degenerative disc disease, a herniated disc, and “a broad-based spondylotic bulge. . . with severe disc flattening and moderate neural foraminal encroachment combined with facet arthropathy.”

Mangene continued to see Dr. DuShuttle and continued physical therapy. Eventually, he was released from physical therapy. Then, on or about May 8, 2012, Dr. Dushuttle noted that Mangene had “reached maximum medical improvement” and that he would “require periodic visits, medications, and/or physical therapy.” In September 2012, Dr. DuShuttle ordered another MRI which Mangene obtained on October 2, 2012. This MRI found that the disc herniation had improved, with some persistent annular fissuring with no new disc herniation. It also found that

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<sup>1</sup> The Court is not persuaded that an error in Dr. DuShuttle’s report of October 2011 in which the doctor indicated that he had reviewed an MRI when no MRI had yet been performed was anything other than a typographical error. Although the doctor’s report contains several typographical errors, the doctor’s diagnosis is acceptable and is given with a degree of reasonable medical probability.

the degenerative disc and facet disease was unchanged. During Mangene's treatment by Dr. DuShuttle, Mangene incurred medical bills in the amount of \$8,155.00, which included the cost of the physical therapy and the MRI's he had received.

On March 7, 2012, Dr. Eric T. Schwartz examined Mangene one time for the purpose of conducting an Independent Medical Examination. He performed the medical examination and reviewed Mangene's medical records up until that date. Dr. Schwartz concluded that the treatment Mangene received subsequent to his June 23, 2011, visit with Dr. Marvel was not "reasonably and medically necessary and directly related to his automobile accident." During a deposition, Dr. Schwartz testified that he disagreed with Dr. DuShuttle's findings regarding the cause of Mangene's injuries for which Dr. DuShuttle treated him because Dr. DuShuttle saw Mangene six months after he had been discharged from Dr. Marvel's care, and he could not say with certainty whether Mangene had sustained any other injuries during that time.

Mangene's original treating orthopedic specialist, Dr. Marvel, was also deposed. He testified that by June 23, 2011, he felt Mangene had fully recovered from his injuries and he, therefore, discharged him as able to resume normal work and other physical activities. On cross examination, Dr. Marvel testified that it was possible for Mangene to have experienced a flare-up of his previous injury when he returned to work after his discharge.

Finally, Dr. DuShuttle was deposed. He testified that Mangene had a "multi-level degenerative disc activated by the accident, and . . . a herniated disc at L4-5 post motor vehicle accident." He specifically stated that both injuries were related to Mangene's automobile accident. Dr. DuShuttle testified that during the course of his treatment of Mangene, he prescribed pain medications, anti-inflammatory medicines and physical therapy to treat the back

pain Mangene was experiencing. Dr. DuShuttle indicated that Dr. Schwartz's conclusion that Mangene's injuries had resolved in 2011 was incorrect because

[y]ou cannot have an injury and have resolution when there's a permanent problem like I just explained. He can get some better, which I believe he did, I mean he avoided surgery and I think that's good; it could have been a lot worse. But with this type of disc injury, especially, a large percentage go on to surgery, but he's made some improvement. But to say that his problems have resolved or to say that he's not having a problem or won't have a problem in the future is pretty ludicrous, because it's not, it's not normal again, I mean it can't be.

Dr. DuShuttle testified that with the sort of injury Mangene incurred, he "is not going to have incapacitating pain every day; there are going to be days he's going to feel better, and days he's not." Dr DuShuttle also testified that despite Dr. Marvel's beliefs that Mangene had recovered from his injuries in June of 2011, Mangene continued to suffer from pain related to the injuries after he stopped seeing Dr. Marvel.

## DISCUSSION

Delaware law requires an insurer to compensate its insured for medical expenses that relate to a motor vehicle accident and that are reasonable and necessary. *State Farm Mutual Insurance Co. v. State Dept. of Natural Resources and Environmental Control*, 2011 WL 2178676, \*2 (Del. Super. Ct. May 31, 2011) (citing 21 Del. C. § 2118(a)(2)). "The statutory standard is reasonable and necessary, which includes reasonable medical probability." *Id.* (citing

*Dennis v. State Farm Mut. Auto. Ins. Co.*, 2008 WL 4409436, at \*2 (Del.Super.Feb.13, 2008). The statute is intended to be “liberally construed to achieve the public policy of universal coverage.” *Lundberg v. State Farm Mutual Automobile Insurance Co.*, 1994 WL 1547774, \*2 (Del. Ct. Comm. Pl. Jul. 11, 1994) (citing *Morgan vs. State Farm Mutual Auto Ins. Co.*, 402 A.2d 1211 (Del. Super. Ct. 1979)).

A “claimant to medical expense benefits under a relevant no-fault statute bears the burden of proof to establish by a preponderance of the evidence that the medical services received were necessary and that the bills or charges for such services were reasonable.” *Watson v. Metropolitan Property and Cas. Ins. Co.*, 2003 WL 22290906, \*5 (Del. Super. Ct., Oct. 2, 2003) (citing 17 Lee R. Russ & Thomas F. Segalla, *Couch On Insurance* § 254:59 (3d ed.2001)) (internal brackets omitted).

The Court has examined the medical records, reports and depositions provided by the parties. The Court finds that reasonable medical minds may disagree on a diagnosis, but Mangene’s testimony at trial was both compelling and credible. The Court finds that Mangene experienced pain in the aftermath of the accident. The Court finds that although Mangene’s pain seemed to ebb and flow, occasionally being manageable and flaring up at other times, all of the back and heel pain he experienced was related to the automobile accident in which he was involved on November 18, 2010. The Court finds compelling Mangene’s testimony that after he was discharged from Dr. Marvel’s care, he continued to experience pain, but attempted to treat it on his own. The Court is persuaded that Mangene sought less strenuous work, to accommodate the pain he continued to experience. Thus, the Court finds that the pain that Mangene brought to Dr. DuShuttle was a flare-up of the injuries for which he treated with Dr. Marvel, and that the treatment he obtained was both reasonable and necessary, and related to his motor vehicle

accident. The medical testimony for this case is consistent with the Court's findings. In this regard, the Court notes that no MRI was ordered for Mangene until he was treated by Dr. DuShuttle. The Court firmly believes that Mangene's MRI's showed the injuries that Mangene obtained as a result of his automobile accident on November 18, 2010. Therefore, the Court finds that the medical expenses incurred by Mangene to treat his injuries with Dr. DuShuttle were reasonable and necessary and were a direct result of the injuries that he incurred as a result of his automobile accident of November 18, 2010.

### CONCLUSION

As a result of the Court's findings of fact, which are based upon the entire record, including all direct and circumstantial evidence, and all references resulting therefrom, and the Court's conclusions of law, the Court enters judgment for the plaintiff, Mangene, and against the defendant, State Farm, in the amount of \$8,155.00, plus court costs and post judgment interest at the legal rate.

**IT IS SO ORDERED this 28<sup>th</sup> day of May, 2015.**



**CHARLES W. WELCH  
JUDGE**