



Smith Freed Eberhard

OREGON LAW UPDATE

case in point...

PIP Benefits Do Not Include Medical-Related Transportation Costs

From the desk of Josh Hayward: Oregon PIP claimants routinely seek reimbursement for expenses they believe are related to medical care, including transportation to doctor's offices and pharmacies. Oregon's PIP benefits statute requires reimbursement for, among other things, "expenses of medical...services." In this case, the Oregon Supreme Court decided whether transportation costs were included as expenses of medical services. Read on to see what they determined.

Claims Pointer: In this case arising out of a car accident, the Oregon Supreme Court held that expenses for ordinary transportation to receive medical treatment or to obtain medication are not compensable PIP benefits under Oregon's PIP benefits statute. The case provides clarity on what has long been an unclear aspect of PIP benefits in Oregon and will have an impact on many PIP claims in the state.

Dowell v. Oregon Mutual Auto Ins. Co., 361 Or 62 (February 16, 2017)

In 2008, Stephanie Dowell ("Dowell") was injured in a car accident. Among other expenses, Dowell incurred \$430.67 in transportation costs to attend medical appointments and to obtain medication. She then applied for Personal Injury Protection ("PIP") benefits under her own insurance policy with Oregon Mutual Auto Insurance Company ("Oregon Mutual"). Oregon Mutual paid for Dowell's medical care, but it declined to pay for her transportation expenses to obtain her medical care.

Dowell filed suit for breach of contract, alleging that her claim for medical expenses under ORS 742.524(1)(a) (Oregon's PIP benefits statute) included her transportation costs and that Oregon Mutual had breached its contract by failing to reimburse her for those expenses. Oregon Mutual responded by filing a motion for summary judgment, arguing that ORS 742.524(1)(a) did not require it to pay for transportation costs. The trial court agreed and granted Oregon Mutual's motion and entered a judgment in its favor. Dowell appealed.

The Court of Appeals narrowed the case to a single question: Does the phrase "expenses of medical...services" in ORS 742.524(1)(a) require an insurer to pay an insured's expenses for transportation to attend medical appointments and to obtain medication? As we previously reported, the Court of Appeals

considered the statute's text and context and concluded that the legislature had not intended the statute to include transportation expenses. Dowell appealed to the Oregon Supreme Court.

ORS 742.524(1)(a) requires payment for "[a]ll reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services, incurred within one year after the date of the person's injury, but not more than \$15,000 in the aggregate for all such expenses of the person" (emphasis added). The statute also contains a presumption that expenses of medical and other listed services claimed by a "provider" on behalf of the insured are reasonable and necessary unless the insurer timely denies the claim. On appeal, Dowell argued that the statute at issue should be construed liberally, and, read in that light, the phrase "expenses of medical...services" should be understood as including "costs to obtain medical services" such as transportation to a doctor's office or hospital to obtain medical advice and treatment. Dowell further argued that the Court of Appeals' decision conflicted with the purpose and policy of the PIP statutes, which is to reduce litigation and ensure prompt payment of claims.

Oregon Mutual responded that the text and context of the statute limit payment to the cost of services expressly listed in the statute that are performed by a licensed healthcare "provider." Oregon Mutual pointed out that the statute explicitly refers to ambulance services

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and not to other transportation, and that it includes a presumption concerning payments for healthcare providers. Accordingly, Oregon Mutual argued, PIP benefits are not meant to cover “providers of non-health care services” such as taxicab or bus services, or services that insureds perform for themselves, such as driving to the doctor’s office.

The Oregon Supreme Court thoroughly examined the legislative history behind the PIP statutes, as well as the key terms used in the phrase at issue, ultimately determining that neither Dowell’s nor Oregon Mutual’s respective readings of the statute were precisely on point. The Court noted that when the legislature developed the legislation leading to ORS 742.524(1)(a), it was not concerned with delayed payments to injured motorists for their transportation costs to receive medical care. Rather, the legislation was introduced to encourage prompt payment of medical costs and lost wages. Accordingly, the Court held that the legislature did not intend expenses for ordinary transportation to receive medical treatment or to obtain medication to be PIP benefits under ORS 742.524(1)(a). Instead, the phrase “expenses of medical...services” in that statute requires an insurer to pay for healthcare bills and items that a physician or other healthcare provider prescribes for treatment, such as medications, and medical supplies and equipment. The Court of Appeals and the trial court were affirmed.

View full opinion at: <http://www.publications.ojd.state.or.us/docs/S063079.pdf>

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