

Name of Case: Mohammad Al-Atoum v 21st Century Advantage Insurance Company

Number/Court: 14-007451-NI.

Judge: John H. Gillis, Jr.

Type of Action: First Party PIP action for medical benefits only.

Demand: Approximately \$60,000.00 in medical expenses.

Issue: Was Plaintiff injured as alleged in an accident that occurred on April 6, 2014 and if so, did Plaintiff incur allowable expenses as a result of the alleged motor vehicle accident.

Summary of Trial:

On April 6, 2014, Plaintiff alleged he was involved in a rear end motor vehicle accident involving three cars. No one was injured other than as alleged by Plaintiff. Photographs of the alleged damages associated with the motor vehicle accident showed minor damages to the bumper and trunk area of Plaintiff's vehicle. Plaintiff was a listed driver under a policy issued by 21st Century Advantage Insurance Company. The day after the motor vehicle accident, Plaintiff presented to Oakwood Hospital complaining of pain to the left side of his head and neck only. Plaintiff made no mention of lumbar pain or radiculopathy in any extremity. All diagnostics including the CT scan of the cervical spine were normal. He was discharged and told to follow up with his primary care doctor. Instead of following up with his primary care doctor, he hired his attorneys three days after the MVA, who referred him to a chiropractor and the next day, Plaintiff's counsel, not Plaintiff, reported the claim to Defendant.

The scope and nature of Plaintiff's complaints allegedly attributable to the motor vehicle accident grew as time went by to include low back pain with radiculopathy in the lower extremities and neck pain with radiculopathy to his upper extremities and the chiropractor referred Plaintiff for MRIs of the lumbar and cervical spines. All experts agreed that the MRI of the cervical spine was normal. The MRI of the lumbar spine was interpreted to show bulges and protrusions but notably, the radiologist made no mention of any contact between the disc and the nerve in his report. The chiropractor ultimately referred Plaintiff to an orthopedic surgeon and on the first visit and without reviewing the actual lumbar MRI film, the surgeon diagnosed Plaintiff with a herniated disc and he prescribed injection therapy with his partner and an EMG study of the upper and lower extremities with his other partner. All experts agree that the EMG of the upper extremities was normal. The EMG of the lower extremities was interpreted to show L5-S1 radiculopathy. Plaintiff ultimately underwent injection therapy in the fall of 2014.

After the MVA, Plaintiff continued to work. During 2015, Plaintiff reported continued improvement in his pain and symptoms but in October of 2015, when he once again saw the surgeon and although he reported some “back discomfort” and some pain from his calf to his foot, Plaintiff was sent him back for injection therapy which was conducted in the months of October and November of 2015. The surgeon also ordered a repeat MRI of the lumbar spine based on the above presentation.

Plaintiff filed suit about two months after reporting the accident via his attorneys.

In March of 2015, Plaintiff underwent an IME with orthopedic spine surgeon who, after review of the records and actual films, concluded that there were absolutely no signs of traumatic injury to the lumbar spine (or the cervical spine) and that at most, Plaintiff may have sustained a sprain or strain injury to his cervical spine. Accordingly, Defendant paid for chiropractic services for 10 weeks post motor vehicle accident as well as for the MRI of the cervical spine, all of which the IME doctor stated were reasonably related to the care and treatment of the potential cervical strain or sprain. However, Defendant defended this action on the basis that there was absolutely nothing wrong with the Defendant’s lumbar spine and hence, no need for further treatment including the injection therapy.

After 45 minutes of deliberation, all eight jurors unanimously agreed that Plaintiff did not sustain a traumatic injury to his lumbar spine as a result of the alleged motor vehicle accident and thus returned a no cause of action verdict in favor of Defendant.

Verdict: No injury/No cause.

Credit: Michelle F. Kitch.