

Andary v USAA – The Status Quo Remains

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In its long-awaited opinion released the morning of Monday, July 31, 2023, the Michigan Supreme Court largely maintained the existing opinion on 2019's amendments to the No-Fault Act.

The Court of Appeals had previously ruled that the No-Fault Act's amendments did not apply retroactively, and the Supreme Court maintained that holding. Before the amendments were enacted, there was no limit as to the number of hours a family member could provide attendant care to an injured person. Moreover, there was no limit to what a medical provider could charge so long as the charge was reasonable and customary. Plaintiffs Andary and Kruger directly challenged the new limits from the amendments as to family-provided attendant care, arguing that the Legislature effectively took away rights they had to fully reimbursable family-provided care, even though they were injured and incurring this care before the amendments were enacted.

The Court of Appeals had held that Plaintiffs Andary and Kruger were still entitled to the level of care they had before the accident; that is, that the amendments could not apply retroactively to their claims – otherwise, the amendments would violate the contracts clause of the Michigan Constitution by taking away vested contract rights without due process. The Supreme Court agreed in part, holding that the Legislature evidenced no intent to apply these changes retroactively when enacting the amendments. Rather, as PIP benefits are both statutory and contractual in nature, the rights and obligations of the parties become immutable after a covered accident occurs. Therefore, an injured person's rights to benefits vest when the injury occurs and when the injured person first becomes eligible for benefits. The same conclusion would apply to the "fee schedule" – when the injury occurs, the insurer's legal obligation to reimburse for expenses does as well, even if the injured person does not submit or claim those expenses until later.

The Supreme Court further rejected the due process and contracts clause analysis of the Court of Appeals, as addressing this retroactivity question resolved the issue and thus removed Andary and Kruger's standing to challenge it. Moreover, Plaintiff Eisenhower Center's arguments based on the rights of potential future patients were too abstract to maintain standing for the due process challenge.

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Such a holding leaves open a potential challenge from injured individuals who may have a policy already in effect at the time of the amendments, then injure themselves after the amendments but before a new policy drafted in conformity with those amendments could have been issued. In such a situation, there likely would still be questions regarding which law governs – the statute or the policy. Indeed, the Supreme Court seems to have contemplated this scenario but declined to address it. Ultimately, an injured person currently involved in litigation could present this challenge to the Supreme Court for direct analysis.

As for the fee schedule, the Court of Appeals had remanded to the trial court for further discovery as to the impact of the reduced charges on providers such as Plaintiff Eisenhower Center. The Supreme Court found such an action unnecessary by employing a “rational basis” review, thereby concluding that the Legislature had a rational basis to enact the fee schedule and that the fee schedule was reasonably related to that rational basis of reducing auto insurance premiums for Michiganders.

Ultimately, the Supreme Court may have disagreed partly with aspects of the Court of Appeals’ reasoning, but they came to the same conclusion. The No-Fault Act’s amendments remain valid and prospective only.

We will stay tuned as to any further challenges in the future, as there still are some loopholes in the legislation, including whether a medical provider deliberately avoids the fee schedule by coding their bills outside of Medicare, or the scenario discussed above involving injured persons with policies enacted before the amendments.

Contact your Novara Insurance Defense lawyer if you have a question on this new ruling and would like to discuss in greater depth.