



Insurer sued over attendant care benefits

Company ultimately paid well beyond requested increase

By: Michigan Lawyers Weekly Staff ■ in Verdicts & Settlements ○ April 8, 2019

Plaintiff, now age 82, suffered a traumatic brain injury in a 2006 automobile accident. This was her second lawsuit against the insurance company relating to attendant care benefits. She had asked the insurance company for a cost-of-living increase in her attendant care benefits. She

provided an economist's report supporting her demand. The insurance company refused to a COLA and litigation was instituted. The insurance company blocked discovery at every turn.

Plaintiff filed multiple motions seeking the entirety of the claim file because it was suspected defendant had withheld many electronic documents. Defendant initially claimed there were no emails or instant messages between claims adjusters and their supervisors. Further discovery revealed a substantial number of electronic documents that had been withheld by defendant including an employee evaluation form that revealed the claim supervisor involved in this case had been disciplined for misconduct and poor judgment handling injury claims that were in litigation. Rather than face demotion, the claim manager of more than 20 years quit his job.

Plaintiff requested additional discovery because of this revelation and the court ordered an in camera review of the claim supervisor's employment file that had previously been improperly withheld. The court also ordered an additional deposition of the claim supervisor's manager. The Court of Appeals rejected the insurance company's appeal and the case was returned to the circuit court for trial.

The defendant's disciplined claim manager claimed during his deposition that the level of attendant care claimed by plaintiff's expert witness to have been provided to plaintiff, a Life Skills Trainer, did not exist. During discovery, it was learned that defendant hired an accountant to perform a survey of attendant care providers in Michigan.

The defendant's accountant testified that a Life Skills Trainer did in fact exist and testified to the value of Life Skills Trainer services. Additionally, the defendant's expert accountant clarified at deposition that the "survey" was not a real survey because it had no scientific basis. The expert also testified that calling it a "survey" could be misleading.

Further testimony disclosed that this alleged "survey" was conceived by one of defendant's supervising attorneys with the help of a high-level claim manager. At the direction of the attorney and high-level claim manager, portions of the survey that proved plaintiff's case were withheld from claim adjusters and claim managers, including the portion relating to Life Skills Trainers.

Defendant's accountant, economist, psychiatrist, neuropsychologist, and neurologist all supported plaintiff's case.

Ultimately, the insurance company paid many times the amount of the original request for a cost-of-living increase in the attendant care rate.

Nicholas S. Andrews, counsel for plaintiff, provided case information.

Type of action: Automobile no-fault

Injuries alleged: Traumatic brain injury requiring attendant care services

Name of case: Confidential

Date: Feb. 22, 2018

Case evaluation: \$185,000. The award was rejected by both parties.

Settlement amount: \$2,077,000



Most helpful experts: Robert Ancell, Ph.D. (case management and vocational expert); Sharon Filas (defendant's expert accountant); and Palmer Morrel-Samuels (statistical expert)

Attorneys for plaintiff: Nicholas S. Andrews, Arthur Y. Liss

Tagged with: AUTOMOBILE NO-FAULT



Copyright © 2019 Michigan Lawyers Weekly

P.O. Box 70388

Rochester, MI 48307

(800) 678-5297 fax: (248) 865-3117

