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Plaintiff prevails in no-fault case

Jury sets family member attendant care salary

By: Thomas Franz | In News Stories | May 9, 2019

An Oakland County Circuit Court jury has provided an answer for how much a family member should be paid for administering care of a person who suffered a brain injury following a vehicle or motorcycle accident.

In *Marian Idziak, Conservator of the Estate of Ivoryonna Harper v. USAA Casualty Insurance Company*, the jury awarded the plaintiff a \$33-per-hour salary in addition to a judgment of \$469,584 after USAA refused to pay for attendant care for eight months.



this jury to do was to tell us what the reasonable market rate is for family-provided attendant care in a case involving a brain injury," Andrews said. "I think that's significant because we have a judgment for a specific hourly rate for family-provided attendant care."

While the named defendant was USAA, Andrews said the Michigan Catastrophic Claims Association dictated much of what happened throughout the case.

"We were hopeful to resolve this case but weren't able to because the MCCA at the facilitation was controlling what the insurance company could or couldn't do," Andrews said.

Background

Andrews reported that the plaintiff suffered a severe traumatic brain injury in an automobile-motorcycle crash.

That left her with cognitive and emotional deficits for the remainder of her life, and she could no longer care for herself. She required full-time attendant care, which was provided by her family.

USAA initially did not pay any benefits before the plaintiff's claim was assigned to an adjuster.

The plaintiff's doctor prescribed 24-hour attendant care in the home setting for problem solving, safety and judgment.

Despite the family providing the insurance company with expert opinions of the market rate and attendant care documentation, the adjuster underpaid their claim and also paid it late, Andrews stated.

Legal action

The plaintiff aimed to resolve the case quickly because of the financial hardship the family was put through, Andrews said, and USAA was open to settlement and paid to arrange a facilitation.

However, Andrews said the MCCA appeared at that meeting and was unwilling to authorize any reimbursement for attendant care above a very low ceiling.

Leading up to trial, Andrews said discovery proved to be difficult as USAA didn't answer the complaint timely, which led to Andrews defaulting them.

"The day before the hearing on the motion for entry of default judgment, they filed an affidavit that said they had defenses to this case. The judge allowed the case to proceed," Andrews said.

"As we went through discovery, it was difficult to get information from the insurance company. It required several motions and orders from the judge, and we finally did get the information we were after."

As the case moved to trial, Andrews cross-examined a pair of experts who both wound up withdrawing from the case, leaving the plaintiff's side uncertain as to the defense's strategy going forward.

"What that did is they put us in a position of not knowing what they were going to do at trial, so one of the things I decided to do was call their witnesses. I called the adjuster and the litigation adjuster to just get the full case out there in front of the jury," Andrews said.

During trial, the plaintiff provided testimony from the treating doctor, the plaintiff's mother, an expert on attendant care rates and the insurance adjuster plus a litigation adjuster.

Following trial, Andrews spoke with several jurors to learn how they calculated the \$33-per-hour award.

"One of the first things they wanted to express was the amount the insurance company was paying, \$12 per hour, was insulting," Andrews said. "The jurors looked to the numbers and essentially divided themselves into two groups, one that thought between \$25 and \$30 was reasonable and others who were between \$45 and \$90 per hour."

Andrews said one of the jurors was a COO of a business in southeast Michigan who firmly supported the higher end of the salary award.

"One of the things he expressed was that if the care provider wasn't there, this is what would've cost the insurance company to put the proper person into the home to provide these services. It would've been double or more what we were asking," Andrews said. "It was a unanimous verdict to compromise at \$33."

In addition to the salary award, the nearly \$470,000 judgment included \$300,000 in attorney fees.

"We had to file this lawsuit just to get anything paid at all," Andrews said. "That was one of the reasons for why attorney fees were going to be owed. They had no reasonable basis to claim or to provide for their delay in payment of eight months."

Defense attorney Bryan Valentine did not respond to requests for comment on this case.

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