

Third District Court of Appeal

State of Florida

Opinion filed February 26, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D18-2030, 3D18-2031, 3D18-2033
Lower Tribunal Nos. 18-2940, 18-2941, 18-3821

Geico General Insurance Co.,
Appellant,

vs.

Beacon Healthcare Ctr. Inc.,
as assignee of Ramon Martinez, Angel Carrero
and Teresa Landa Del Castillo,
Appellee.

Appeals from the County Court for Miami-Dade County, Gloria Gonzalez-Meyer, Judge.

Smith, Gambrell & Russell, LLP, and John P. Marino, Kristen L. Wenger and Drew Krieger (Jacksonville), for appellant.

Christian Carrazana, P.A., and Christian Carrazana, for appellee.

Before LINDSEY¹, HENDON, and MILLER, JJ.

HENDON, J.

¹ Judge Lindsey did not participate in oral argument.

In these three consolidated appeals, the Miami-Dade County Court has certified the following two questions of great public importance. See Fla. R. App.

P. 9.160:

MAY A PERSON WHO IS LICENSED AS A MASSAGE THERAPIST, BUT NOT LICENSED AS A PHYSICAL THERAPIST, LAWFULLY RENDER PHYSICAL THERAPY MODALITIES ENUMERATED IN § 486.021(11) WHERE SUCH THERAPY IS PART OF OR INCIDENTAL TO THE LAWFUL PRACTICE OF MASSAGE THERAPY?

MAY A HEALTH CARE CLINIC LICENSED UNDER PART X CHAPTER 400 RECEIVE PIP REIMBURSEMENTS FOR PHYSICAL THERAPY SERVICES ENUMERATED IN §486.021(11) RENDERED BY A LICENSED MASSAGE THERAPIST EMPLOYED BY THE CLINIC THAT IS NOT “MASSAGE” AS DEFINED BY § 480.033(3), FLA. STAT.?

We conclude that a licensed massage therapist can lawfully render physical therapy modalities pursuant to the exception set forth in the Physical Therapy Act, section 486.021(11). However, a health care clinic or provider licensed under part X Chapter 400 may not receive PIP reimbursements for physical therapy services enumerated in section 486.021(11) rendered by a licensed massage therapist employed by the clinic that is not “massage” as defined by section 480.033(3), because the plain language of the PIP statute precludes those reimbursements.

These consolidated cases arose out of auto accidents that triggered personal injury protection (“PIP”) insurance coverage pursuant to the insureds’ GEICO General Insurance Company’s (“GEICO”) automobile insurance policies. Beacon

Healthcare Center, Inc. (“Beacon”) is the clinic that provided the rehabilitation therapies to the GEICO insureds. During the insureds’ initial consultations at Beacon, the treating physician (and Beacon’s medical director), Dr. Michael Formisano, prescribed physical therapy using what are known as therapy “modalities,” that include use of hot/cold packs, electric stimulation, ultrasound, myofascial release (manual therapy), and traction, among others. These therapies were provided to the insureds by massage therapists who held massage therapy licenses, but did not hold licenses in physical therapy. The massage therapists were not directly supervised on site by either a licensed physical therapist or by a medical physician when they performed the treatments. The massage therapists used the prescribed therapy modalities that Dr. Formisano recommended.

Beacon Healthcare subsequently billed GEICO for “physical therapy” treatments, and erroneously indicated on one part of the billing form, “Box 31”,² that Dr. Formisano provided the treatments, rather than the massage therapists.

² See, e.g., § 627.736(5)(d), Fla. Stat. (requiring all PIP bills submitted on CMS-1500 forms – also known as “HCFA-1500” forms – to comply with the CMS-1500 form instructions); Medicare Claims Processing Manual, Chapter 26, entitled “Completing and Processing Form CMS-1500 Data Set”, Item 31 (requiring HCFA-1500 forms to set forth, in Box 31, the name of the individual who either personally performed or directly supervised the underlying health care service); Radiology & Neurology Consultants, Inc., (a/a/o Sinodas Joseph) v. Progressive Consumers Ins. Co., et al., Case No. CACE-04-04201 (Fla. 17th Cir. Ct. Feb. 9, 2005)(stating that Box 31 sets forth the provider who either personally performed or directly supervised service). This issue was abandoned on appeal by Appellees.

The billing statements also indicated that the massage therapists performed “physical therapy” under the direct supervision of Dr. Formisano. Dr. Formisano, however, is merely Beacon’s medical director whose responsibility is to systematically review Beacon’s patient files once a month. GEICO had notice of these errors in the billing and denied the claims entirely, rather than the specific line item claims. GEICO then sued Beacon in federal court for submitting claims for charges for physical therapy services that were unlawfully rendered by unsupervised massage therapists, and for operating in violation of the Health Care Clinic Act.³

While that case was pending, Beacon filed suit against GEICO for a declaratory judgment that 1) the therapy modalities were lawfully rendered as services “incidental” to the licensed practice of massage and thus the therapists did not need to be licensed as physical therapists; and 2) that Beacon was operating lawfully, as Dr. Formisano substantially complied with his duties as medical director. GEICO responded that all of Beacon’s charges were barred by section 627.736(1)(a)(5), on the basis that the modalities provided constituted “massage” provided by massage therapists and without direct supervision of an on-site licensed physical therapist. The trial court granted summary judgment and final declaratory judgment to Beacon, concluding that a health care clinic can recover

³ Sections 400.990-400.995, Fla. Stat. (2019).

no-fault PIP insurance benefits for physical therapy services performed by unsupervised massage therapists (the “Final Declaratory Judgments”). The trial court certified two questions to this Court.

I. STANDARD OF REVIEW

Review of the certified questions presented involves a matter of pure statutory construction, and is subject to de novo review. Halifax Hosp. Med. Ctr. v. State, 278 So. 3d 545 (Fla. 2019); see also Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr., 260 So. 3d 219, 223 (Fla. 2018); Allstate Ins. Co. v. Orthopedic Specialists, 212 So. 3d 973, 975 (Fla. 2017) (quoting Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc., 141 So. 3d 147, 152 (Fla. 2013)) (“Because the question presented requires this Court to interpret provisions of the Florida Motor Vehicle No–Fault Law—specifically, the PIP statute—as well as to interpret the insurance policy, our standard of review is de novo.”). Statutes must be given their plain and ordinary meaning when their language is clear and unambiguous. See Metro. Dade Cty. v. Milton, 707 So. 2d 913, 915 (Fla. 3d DCA 1998). When employed in a statute, words of common usage should be interpreted in a plain and ordinary sense. Id.

II. ANALYSIS

The PIP Statute was amended, effective January 1, 2013, to exclude massage from the types of health care services that are eligible for PIP

reimbursement. The statute also prohibits massage therapists from receiving PIP reimbursement. See § 627.736(1)(a)(5), Fla. Stat. (2019) (“Medical benefits do not include massage as defined in s. 480.033 ... , regardless of the person, entity, or licensee providing massage ... and a licensed massage therapist ... may not be reimbursed for medical benefits under this section.”). Pursuant to the Physical Therapy Practice Act, only licensed physical therapists may practice physical therapy, or hold themselves out as being able to practice physical therapy. See § 486.028, Fla. Stat. (2019) (“No person shall practice, or hold herself or himself out as being able to practice, physical therapy in this state unless she or he is licensed in accordance with the provisions of this chapter; however, nothing in this chapter shall prohibit any person licensed in this state under any other law from engaging in the practice for which she or he is licensed.”). The Physical Therapy Practice Act contains an exemption that makes clear it is not intended to prohibit licensed massage therapists from using physical agents as a part of, or incidental to, the lawful practice of their profession as massage therapists. See § 486.161(1), Fla. Stat. (2019) (“No provision of this chapter shall be construed to prohibit any person licensed in this state from using any physical agent as a part of, or incidental to, the lawful practice of her or his profession under the statutes applicable to the profession of ... massage therapist ...”).

While there is some overlap between the two licensed practices, they are different practices requiring different licensures. Regardless of the use of physical therapy modalities “incidental to” the practice of massage therapy, the PIP statute precludes reimbursement for services provided by a licensed massage therapist. The trial court erred when it appeared to rely on the “incidental to” language in the Physical Therapy Act, section 486.161(1), to deem the Beacon Healthcare massage therapists’ services eligible for PIP reimbursement. The services were performed in these consolidated cases by unsupervised massage therapists, regardless of the modalities used. The plain language of the PIP statute, section 627.736(1)(a)(5), precludes reimbursement to the massage therapists – or to Beacon Healthcare – as these services were erroneously billed as having been directly supervised by a licensed physical therapist or medical doctor.

III. CONCLUSION

We hold that the answer to the first certified question, “May a person who is licensed as a massage therapist, but not licensed as a physical therapist, lawfully render physical therapy modalities enumerated in section 486.021(11) where such therapy is part of or incidental to the lawful practice of massage therapy?” is yes. But, will they get reimbursed from PIP? The answer to the second certified question is no. A health care clinic licensed under part X Chapter 400 may not receive PIP reimbursements for physical therapy services enumerated in section 486.021(11)

rendered by a licensed massage therapist employed by the clinic that is not “massage” as defined by section 480.033(3), because the plain language of the PIP statute precludes those reimbursements.

We thus vacate the final declaratory judgments entered in Beacon’s favor and remand with instructions to enter judgment in favor of GEICO.

Judgments vacated; and remanded, with instructions.