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Court of Appeals Rules 2010 Amendment Concerning Reimbursement For Chiropractic Services Does Not Apply Retroactively

By Alison M. Quinn

On November 8, 2012, the Court of Appeals released an unpublished per curiam opinion in the case of *Warren Chiropractic and Rehab Clinic, P.C. v Homeowners Insurance Company* (Docket No. 303919). This was a lawsuit filed by a claimant's chiropractor for no fault benefits pursuant to MCL § 500.3101 *et seq*. Significantly, this was the first Court of Appeals decision to address the 2010 changes made to MCL § 500.3107b(b) concerning reimbursement for chiropractic services.

The current version of MCL § 500.3107b, as amended on January 5, 2010, provides that an insurer is not required to pay no fault benefits for:

> "(b) A practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, **as of January 1, 2009**." (emphasis added)

SECREST WARDLE NOTES:

In cases where chiropractic services are at issue, the key inquiry is whether the service was performed before or after January 5, 2010. In order to be compensable under the No Fault Act, chiropractic services performed after January 5, 2010 must fit within the definition of "practice of chiropractic" as the statute existed on January 1, 2009. Warren Chiropractic establishes that the Legislature intended on reimbursement for these services to be limited by that narrow definition, rather than the current expanded definition.

Prior to the January 5, 2010 amendment courts relied upon the Court of Appeals decision in *Hofmann v Auto Club Insurance Company*, 211 Mich App 55 (1995). The *Hofmann* Court opined that treatment by a chiropractor could be compensable under the No Fault Act even if it fell outside the defined scope of chiropractic practice, so long as it did not constitute an unlawful practice of another health discipline or otherwise constitute an illegal act by a chiropractor. The Court held that pelvic x-rays; use of cervical pillows, cervical collars, lumbar belts, and lumbar supports; cervical and intersegmental traction when used for purposes of correcting a subluxation or misalignment; and Sacro Occipital Technique blocks were within the scope of chiropractic practice. On the other hand, orthopedic and neurological examinations; the application of heat and cold packs; intersegmental traction when used only for therapeutic purposes were outside the scope of chiropractic practice.

In *Warren Chiropractic*, Plaintiff appealed the trial court's order granting Defendant's motion for summary disposition. Plaintiff argued that the trial court erred in rectroactively applying the amended version of MCL § 500.3107b(b) and that the statute must be read to incorporate the amended version of MCL § 333.16401, which expanded the definition of "practice of chiropractic" to include not only the human nervous system but also the musculoskeletal system, the diagnosis of human conditions and disorders of the human musculoskeletal and nervous system as they relate to subluxations, misalignments, and joint dysfunctions. In affirming in part and reversing in part the trial court's order, the *Warren Chiropractic* Court held that the

amended version of MCL § 500.3107b(b) was a substantive change in the law therefore, it does not apply retroactively. In addition, § 500.3107b(b) does not incorporate the amended version of MCL 333.16401 because the statute clearly provides that the definition of "practice of chiropractic" applies as it was defined as of January 1, 2009.

Prior to January 1, 2009 the scope of chiropractic services under MCL § 333.16401(1)(b) read as follows:

> "Practice of chiropractic" means that discipline within the healing arts which deals with the nervous system and its relationship to the spinal column and its interrelationship with other body systems. Practice of chiropractic includes the following:
>
> (i) Diagnosis, including spinal analysis, to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care.
>
> (ii) The adjustment of spinal subluxations or misalignments and related bones and tissues for the establishment of neural integrity utilizing the inherent recuperative powers of the body for restoration and maintenance of health.
>
> (iii) The use of analytical instruments, nutritional advice, rehabilitative exercise and adjustment apparatus regulated by rules promulgated by the board pursuant to section 16423, and the use of x-ray machines in the examination of patients for the purpose of locating spinal subluxations or misaligned vertebrae of the human spine. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, or the dispensing or prescribing of drugs or medicine.

The *Warren Chiropractic* holding makes clear that for chiropractic services provided after January 5, 2010, in order to be compensable, the service must fit within this pre January 1, 2009 definition of "practice of chiropractic" and the *Hofmann* analysis no longer applies. Although chiropractors were given an expanded scope in which to work under the new amendment, insurers are not required to pay for these expanded services.

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