

Eastern District Extends *Griffith's* Decision To Room, Board And Ordinary Living Expenses

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In *Peabody v. State Farm Mutual Automobile Ins Co.*, a case pending in the U.S. District Court for the Eastern District of Michigan, Judge Lawrence Zatkoff recently entered an Opinion and Order Granting State Farm's Motion for Summary Judgment by extending the analysis of *Griffith v State Farm Mutual Automobile Ins. Co.*, 472 Mich 521 (2005) to claims for room and board, utilities, phone service, cellular phone service, internet access, and cleaning.

Plaintiff Bradley Peabody filed this case as the guardian of Jennifer Lynn Peabody. Jennifer was tragically injured in a car accident on May 7, 1987. She suffered a closed head injury which has caused her to be mentally incapacitated. Following her accident, Jennifer was in and out of various hospitals and rehabilitation facilities. In 1988, Jennifer was transferred to the PTI (Personal Therapists Incorporated) rehabilitation center in Livonia, Michigan. Jennifer was there for approximately six years until 1995, when she moved to a home in Grosse Pointe, Michigan. This move brought Jennifer closer to the home of her parents who were Grosse Pointe natives. While Jennifer was at PTI, Defendant paid \$575 per month for rent. Following her move to Grosse Pointe, Defendant continued to pay \$560 per month, though Jennifer's monthly rent was now \$1,500 per month.

In 2003, Jennifer's mother, through Jennifer's trust, purchased the house at 370 Neff for Jennifer to live. The monthly mortgage for the home was \$3,300. Mrs. Peabody was able to find an upstairs tenant to pay \$1,350 per month, leaving approximately \$2000 per month as Jennifer's housing cost. Plaintiff continued to pay approximately \$560 per month in rent over this period.

Plaintiff filed this action pursuant to Michigan's No-Fault Insurance Act and alleges that Defendant owes any uncompensated portions of Jennifer's room and board from 1995, when Jennifer moved out of the PTI rehabilitation facility, to the present. In addition to compensation for room and board, Plaintiff's Complaint asserts that since 2003, Defendant owes monthly amounts for utilities, phone service, cellular phone service, internet access and cleaning.

Continued on page 8

Peabody v State Farm

Continued from page 7

In *Griffith*, a 2005 decision of the Michigan Supreme Court, the plaintiff claimed that defendant insurance company owed personal protection insurance benefits for the cost of food. However, the Michigan Supreme Court held that food was not an allowable expense pursuant to MCL § 500.3107(1)(a) and, therefore, the insurance company did not have to reimburse plaintiff for the cost of food. The Michigan Supreme Court's holding was based on the language of MCL § 500.3107(1)(a), which defines an "allowable expense" as "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. "The care, recovery, or rehabilitation expenses have to be necessary because of the injuries sustained in the automobile accident. Since the plaintiff did not require a special diet different from that of an uninjured person, his food expenses do not qualify as an "allowable expense" because the food is not necessary for the injured person's care, recovery, or rehabilitation.

In *Peabody*, Judge Zatkoff extended that analysis to Plaintiff's claims for room and board, utilities, phone service, cellular phone service, internet access, and cleaning. Since Plaintiff Peabody could not show that the alleged room and board and other living expenses were related to her care, recovery or rehabilitation, these expenses are simply ordinary living expenses that Plaintiff Peabody would incur regardless of her injury. Therefore, the expenses are not "allowable expenses" and are not compensable under *Griffith*. In fact, Judge Zatkoff's opinion states that this is exactly the type of situation envisioned by the Court in *Griffith*.

The analysis from *Griffith v State Farm Mutual Automobile Ins. Co.* was correctly applied by Judge Zatkoff to include ordinary living expenses other than food only. According to Judge Zatkoff, expenses for room and board, as well as other utilities, are not compensable under the No Fault Act because they do not qualify as "allowable expenses" under MCL § 500.3107(1)(a). To qualify as an "allowable expense," the expense must be one that is necessary for the injured person's care, recovery, or rehabilitation from injuries related to the subject motor vehicle accident. Since Peabody could not show that these ordinary living expenses were necessary because of her injuries from the motor vehicle accident, summary judgment in favor of State Farm, the no fault insurer, was appropriate.