Court Rules that Post-“IME” Medical Care is Entitled to “No Fault” Presumption of Medical Necessity

In our ‘no-fault’ recovery law practice, we are often asked by health care providers whether they should continue to treat patients after an Independent Medical Examination (IME) has been conducted, or after a peer review denial has been issued by the insurance carrier. Our recommendation is to treat the patient and not the policy. Therefore, if the healthcare provider determines in his professional opinion that the patient requires further treatment, then it is advised that he should treat the patient and continue to properly document all treatment, testing and referrals.

A recent court case tried by Abrams Fensterman dealt with this exact issue. The Court held that despite the insurance carrier’s decision to rely on the findings of the physician who conducted the IME (and who opined that no further treatment was necessary), the provider should be paid for the professional services which he rendered after the IME was conducted.

Interestingly, but not surprisingly, the IME doctor testified at trial that while he had reviewed some of the medical records generated by other treating health care providers, he did not review any of the records of the treating chiropractor who had commenced this action for payment of his outstanding fees.

In its decision, the Court cited existing case law which stands for the legal premise that once a treating provider has timely submitted claims forms for treatment, there is a presumption that the treatments rendered were medically necessary. The decision also asserts that an “IME cutoff” is only the IME doctor’s opinion rendered at the time of the exam; is based on both objective and subjective findings at that time; and is simply a prediction by the IME doctor as to what future treatment or testing the patient may require.

Most importantly, the Court, relying on existing case law, held that once the treating provider renders “post IME treatment” and timely submits the claim forms to the insurance carrier, the provider again establishes the presumption that the treatment is medically necessary. This shifts the burden of proof to the insurance carrier “to establish a factual basis and medical rationale for its determination that the treatment was unnecessary.” Since the IME doctor testifying in this case indicated that he did not review any records relating to the treatments in dispute, and admitted that he was unaware of the reasons why the patient sought treatment from the plaintiff-chiropractor, then the insurance carrier failed to prove either a factual basis or a medical rationale for its determination that the chiropractic treatment was unnecessary.

Accordingly, based on the facts and applicable case law, the Court rendered its decision in favor of the plaintiff-provider.

If you have any questions concerning this case, please contact the no fault department, at Abrams Fensterman at 516-248-2929.