PLUNKETT COONEY

Insurers allowed to off set Social Security Disability benefits with recent federal court ruling

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The U.S. District Court for the Eastern District of Michigan recently held that an insurer has the right to off set Social Security Disability (SSD) benefits, even if such benefits are not actually paid, and even if the insured fails to take reasonable steps to obtain the government benefit.

In *Fields v State Farm Mut. Auto. Ins. Co.,* No. 11-15296, 2012 WL 1119520 (E.D. Mich. Apr. 3, 2012), Mr. Fields was catastrophically injured in an automobile accident that occurred on April 10, 2010, and he remained at home in need of 24-hour attendant care. His guardian, Sonya Fields, sought to recover attendant care, medical and wage loss benefits that State Farm allegedly failed to pay. State Farm discontinued payment of wage loss benefits because the plaintiff refused to apply for social security benefits, which, if awarded, would be required to be set-off against the amount paid by State Farm.

At the time of the accident, Mr. Fields was insured with State Farm under a policy that required coordination of PIP benefits with other available medical and wage loss benefits. The insurance company was paying no-fault PIP benefits on behalf of the plaintiff totaling over $300,000, an amount that included $7,780.05 in work loss benefits which State Farm paid through Oct. 16, 2010.

On May 27, 2010, State Farm began sending Mr. Fields letters that informed him of his eligibility for SSD benefits and explained State Farm's potential ability to set off the benefit amounts that he was eligible to receive. The letter instructed Mr. Fields to contact the Social Security Administration to file an Application for Benefits within the next 30 days and to notify State Farm when the application was filed. State Farm did not receive any notification that he applied for benefits and wrote Mr. Fields on Oct. 14, 2010, stating that it had not received notice. State Farm explained that it would be unable to provide additional work loss benefits without first receiving an application. State Farm also offered to assist Mr. Fields in submitting or pursuing his application.

Beginning on Oct. 19, 2010, a series of letters were exchanged between State Farm and Mr. Fields' counsel. Mr. Fields' counsel argued that a December 1982 Attorney General Opinion prohibited State Farm from requesting Mr. Fields apply for SSD benefits. State Farm argued that Michigan Law, particularly *Perez v State Farm Mutual Automobile Insurance Co.,* 418 Mich. 634 (1984), permitted it to offset government benefits if the insured refused to use reasonable efforts to obtain them. A letter from State Farm indicated if Mr. Fields provided notice, they would resume paying allowable wage loss benefits pending a ruling on his SSD Application for Benefits. The letter recognized that, in the event

Mr. Fields returned to work prior to one year following his accident, he would not be eligible for SSD benefits.

The district court ultimately held that an insurer has the right to off set SSD benefits, even if such benefits are not actually paid, if the insured fails to take reasonable steps to obtain this government benefit. The court relied on *Perez v State Farm Mutual Automobile Insurance Co., supra*, where the Michigan Supreme Court reasoned that, where benefits were in fact not available to the insured, no set-off by the insurer was permitted because, in such a case, the overall objective of the No-Fault Act, which is to provide prompt and efficient recovery for certain losses caused by the motor vehicle accidents, trumped the complimentary goal of the No-Fault Act to contain the costs of no-fault insurance. *See also Mays v Ins. Co. of North America,* 407 Mich. 165 (1979) (allowing the set off of social security benefits where the insured fails to apply for them in the context of a private contract of insurance); *Grau v Detroit Automobile Inter-Insurance Exchange,* 148 Mich. App. 82 (1986) (embracing the holding in *Perez* as applying with equal force to set off of social security benefits).

The *Fields* court stated that the 1982 Attorney General opinion was not persuasive because it was issued prior to *Perez,* and flew directly in the face of both *Perez* and *Grau.* State Farm's goal in requiring it's insured, who may be eligible, to apply for SSD Benefits was entirely consistent with a central legislative objective of the No-Fault Act, which is to help contain the premium costs of no-fault insurance.

State Farm never required Mr. Fields to apply for SSD benefits as a condition precedent to the immediate receipt of his wage loss benefits. It had been paying those benefits to Mr. Fields under the policy. State Farm also made clear it would resume paying wage loss benefits immediately upon receipt of notice that Mr. Fields was at least making an effort to apply for available government benefits.

Therefore, the court concluded that Michigan law requires a no-fault plaintiff to make reasonable efforts to obtain government benefits that may be available to him. In this case, the court found that the plaintiff's refusal to make any effort to obtain available government benefits empowered State Farm to subtract from its wage loss payments those amounts that its insured would have been able to obtain had he applied for and began receiving social security benefits.

This opinion is not binding on state court cases and it is not precedential in federal court cases, but it does offer persuasive authority to request that the court order the plaintiff to apply for SSD benefits. Furthermore, it can be used to ask the plaintiff to apply for those benefits and it can provide a reasonable basis for adjusters to hold wage loss payments in abeyance until the plaintiff submits an application for SSD benefits.

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