

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

Case No.: CACE23022923 (18)

SARA BETH SCHAFER,

Plaintiff,

v.

AYANNA HENRY and PROGRESSIVE
SELECT INSURANCE COMPANY,

Defendants.

**ORDER ON PLAINTIFF'S MOTION IN LIMINE REGARDING BOARDABLE
MEDICAL EXPENSES**

THIS CAUSE came before the Court on May 17, 2024 upon Plaintiff's Motion in Limine Regarding Boardable Medical Expenses filed on April 1, 2024. The Court, having reviewed the pleadings in support thereto, and having considered argument of counsel, and the Court being otherwise duly advised, the Court FINDS, ORDERS and ADJUDGES that:

the Motion is DENIED.

This case arises from an automobile accident where the Plaintiff alleges she was injured after Defendant Henry's vehicle collided with hers. When Plaintiff initiated treatment for her injuries, she was covered by Florida Blue HMO through her employer. Her preferred medical providers, Dr. Jeffrey Fernyhough, Ambulatory Surgical Center of Boca Raton, Associates MD, Tesla MRI and Firstlantic Healthcare, did not accept this insurance. Notwithstanding the lack of insurance coverage, Plaintiff proceeded to treat with these providers and was billed at their regular rates. Though no formal letter of protection was signed, Dr. Fernyhough agreed to be paid through the proceeds recovered by Plaintiff in this action.

Two questions were presented to this Court regarding the interpretation of §768.0427, Fla. Stat. First, whether a plaintiff's unpaid medical bills are admissible under the statute. Second, whether the statute requires a plaintiff to present all the permissible evidence specified in the statute.

Section 768.0427, Fla. Stat., as enacted in 2023, provides the standards for the admissibility of evidence to prove the cost of damages for medical expenses in certain civil actions. The certain disclosures are also required for medical expenses incurred under letters of protection. *See* § 768.0427(3), Fla. Stat. The law also restricts admissible evidence of medical damages in personal injury actions to amounts actually paid or those that the claimant would be obligated to pay.

Plaintiff contends that the statute identifies numerous types of evidence admissible as to the reasonableness of the Plaintiff's medical expenses. Plaintiff argues that this list is not exhaustive, and cited several cases discussing the relevant factors to be considered when determining the reasonableness of medical expenses. *See i.e. State Farm Mut. Auto. Ins. Co. v. Bowling*, 81 So. 3d 538 (Fla. 2d DCA 2012) (allowing expert testimony to rebut the reasonableness of a plaintiff's bills); *Columbia Hosp. (Palm Beaches) Ltd. P'ship v. Hasson* 33 So. 3d 148, 149 (Fla. 4th DCA 2010) (holding that discovery of a hospital's "particular procedure, including the amount the hospital has charged patients with and without insurance, those with letters of protection, and differences in billing for litigation patients versus non-litigation patients" were relevant to proving the reasonableness of medical expenses at issue in the litigation); *Laser Spine Inst., LLC v. Makanast*, 69 So. 3d 1045 (Fla. 2d DCA 2011) (upholding the production of a provider's documents relating to its billing and collection practices subject to entry of a confidentiality order).

Plaintiff further argues that §768.0427 does not prohibit introducing evidence of her unpaid medical expenses as damages, nor does the statute require Plaintiff to present evidence that the medical expenses are reasonable. Defendant objects and maintains that, while the statute does not include language that prohibits admission of unpaid medical bills, such evidence is nonetheless precluded under Florida law because the Plaintiff did not earn the billed amount. *See Gulfstream Park Racing Ass'n, Inc. v. Volin*, 326 So. 3d 1124 (Fla. 4th DCA 2021); *Nationwide Mutual Fire Ins. Co. v. Harell*, 53 So.3d 1084, 1087 (Fla. 1st DCA 2010).

Here, Plaintiff has not paid premiums for her health insurance that covered the treatment with these out-of-network providers, nor did she receive treatment through a governmental or charitable benefit available to all citizens. While the statute identifies the type of evidence the parties may introduce at trial regarding the reasonableness of the Plaintiff's medical expenses, it did not overrule the long line of cases requiring those medical expenses to be earned.

As to the second issue, Plaintiff concedes in her Motion, and it is well established, that Plaintiff bears the burden to prove her medical expenses *are reasonable and necessary*. *Walerowicz v. Armand-Hosang*, 248 So. 3d 140, 143 (Fla. 4th DCA 2018) (stating it is “Plaintiff’s burden to prove the reasonableness and necessity of medical expenses.”); *Columbia Hosp.*, 33 So. 3d at 150 (“A claimant for damages for bodily injuries has the burden of proving the reasonableness of his or her medical expenses.”) While §768.0427 does not explicitly require Plaintiff to introduce evidence of the reasonableness of the medical expenses she has submitted for the jury’s consideration, the burden still rests on Plaintiff to demonstrate those expenses were reasonable. More than just evidence of the amount of the bill is necessary to establish that the bill is reasonable. *E. W. Karate Ass’n, Inc. v. Riquelme*, 638 So. 2d 604, 605 (Fla. 4th DCA 1994) citing *Albertson’s, Inc. v. Brady*, 475 So.2d 986 (Fla. 2d DCA 1985), rev. denied, 486 So.2d 595 (1986). As the Fourth District Court of Appeal reiterated in *Walerowicz*,

“[a]lthough some jurisdictions consider evidence of the amount of a medical bill to be sufficient proof of reasonableness, many, including Florida, require something more.” *Id.* As we have observed, in a personal injury action, “[t]he patient’s obligation is not to pay whatever the provider demands, but only a reasonable amount.” *Columbia Hosp. (Palm Beaches) Ltd. P’ship v. Hasson*, 33 So.3d 148, 150 (Fla. 4th DCA 2010) (emphasis added) (quoting *A.J. v. State*, 677 So.2d 935, 937 (Fla. 4th DCA 1996)). Thus, in Florida, the plaintiff’s burden to prove the reasonableness and necessity of medical expenses “requires more than just evidence of the amount of the bill to establish that reasonableness.” *E. W. Karate Ass’n, Inc. v. Riquelme*, 638 So.2d 604, 605 (Fla. 4th DCA 1994).

248 So. 3d at 143.

DONE AND ORDERED in Chambers, in Fort Lauderdale, Broward County, Florida on June 20, 2024.



FABIENNE E. FAHNESTOCK, CIRCUIT JUDGE

Copies furnished to:
All parties/counsel of record

Copies Furnished to:

Curtis S. Davis, Email : service@davistrial.law

Curtis S. Davis, Email : Curtis@DavisTrial.law

David Eltringham, Email : lg@eltlaw.com

David Eltringham, Email : pleadings@eltlaw.com

David Eltringham, Email : de@eltlaw.com

James Smeriglio, Email : js@eltlaw.com

Jason Turchin, Email : litigation@victimaid.com

Jessica Maria Hernandez, Email : mmarquez@falkwaas.com

Jessica Maria Hernandez, Email : servicejhernandez@falkwaas.com

Jessica Maria Hernandez, Email : jhernandez@falkwaas.com

Mark Peter Bockstein, Email : yearmaster@aol.com

Rodney G Romano, Email : emilia@matrixmediation.com

Scott L Mendlestein, Email : slmteam@falkwaas.com

Scott L Mendlestein, Email : fmartinez@falkwaas.com

Scott L Mendlestein, Email : eserpa@falkwaas.com

Taylor Ribaud, Email : cooteam@falkwaas.com

Taylor Ribaud, Email : tribaud@falkwaas.com

Taylor Ribaud, Email : acastro@falkwaas.com