

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

PROGRESSIVE SELECT INSURANCE
COMPANY,

Petitioner,

v.

Case No. 5D18-2324

FLORIDA HOSPITAL MEDICAL CENTER
A/A/O ALANYS MELENDEZ,

Respondent.

_____ /

Opinion filed November 2, 2018

Petition for Certiorari Review of Decision
from the Circuit Court for Orange County
Acting in its Appellate Capacity.

Michael C. Clarke, of Kubicki Draper, P.A.,
Tampa, for Petitioner.

Robert J. Hauser, of Pankauski Hauser
PLLC, West Palm Beach, for Respondent.

PER CURIAM.

Progressive Select Insurance Company (“Progressive”) petitions for a writ of certiorari regarding an order issued by the circuit court, sitting in its appellate capacity, in favor of Florida Hospital Medical Center (“Florida Hospital”) a/a/o Alanys Melendez. Progressive seeks certiorari because of the circuit court’s affirmance that Melendez’s personal injury protection (“PIP”) deductible should be applied to 100% of Florida Hospital’s total medical charges before reducing the amount paid by Progressive

pursuant to the statutory reimbursement limitation provided in section 627.736(5)(a)1.b., Florida Statutes (2015).

This case is identical to our recent decisions in Progressive Select Insurance Co. v. Florida Hospital Medical Center a/a/o Parent, 236 So. 3d 1183, 1192 (Fla. 5th DCA 2018), and Progressive Select Insurance Co. v. Florida Hospital Medical Center a/a/o Pena, 236 So. 3d 1182, 1182 (Fla. 5th DCA 2018). In Parent, we denied Progressive's petition for writ of certiorari, concluding:

Section 627.739(2)[, Florida Statutes (2014),] currently requires that the deductible be applied to 100% of the expenses and losses, and that is the version the circuit court properly applied. We see no divergence from the correct law in the circuit court's decision, and we see no violation of a clearly established principle of law that results in a miscarriage of justice.

Parent, 236 So. 3d at 1192. We also certified a question of great public importance:

WHEN CALCULATING THE AMOUNT OF PIP BENEFITS DUE AN INSURED, DOES SECTION 627.739(2), FLORIDA STATUTES, REQUIRE THAT THE DEDUCTIBLE BE SUBTRACTED FROM THE TOTAL AMOUNT OF MEDICAL CHARGES BEFORE APPLYING THE REIMBURSEMENT LIMITATION UNDER SECTION 627.736(5)(a)1.b., OR MUST THE REIMBURSEMENT LIMITATION BE APPLIED FIRST AND THE DEDUCTIBLE SUBTRACTED FROM THE REMAINING AMOUNT?

Id.; see Pena, 236 So. 3d at 1182 (denying certiorari petition based on Parent and certifying same question). The Florida Supreme Court has accepted jurisdiction in Parent. Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr., No. SC18-278, 2018 WL 2064894 (Fla. Mar. 20, 2018). At the time of this opinion, it has not yet rendered its decision.

After we issued our opinions in Parent and Pena, the Fourth District Court reached a contrary result in several of its cases and certified conflict with our decisions. State Farm Mut. Auto. Ins. Co. v. Care Wellness Ctr., LLC, 240 So. 3d 22, 31 (Fla. 4th DCA 2018); USAA Gen. Indem. Co. v. Gogan, 238 So. 3d 937, 937 (Fla. 4th DCA 2018); Progressive Select Ins. Co. v. Blum, 238 So. 3d 852, 853 (Fla. 4th DCA 2018). We accordingly deny the petition, certify conflict with Care Wellness Center, Gogan and Blum, and certify the same question that we previously certified in Parent and Pena as one of great public importance. See Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr. a/a/o Sanchez, 249 So. 3d 779 (Fla. 5th DCA 2018).

PETITION DENIED; CONFLICT CERTIFIED; QUESTION CERTIFIED.

ORFINGER, TORPY and HARRIS, JJ., concur.