MICHAELS & SMOLAK
TRIAL LAWYERS

Can a No-Fault carrier terminate medical benefits on the grounds that the insured has reached "maximum medical improvement"?

By Michael G. Bersani, Esq.

No-fault carriers regularly terminate their insureds' medical benefits on the grounds that they have reached "Maximum Medical Improvement" ("MMI"). Many of their attorneys have not challenged this practice because they assume that the no-fault carrier has the right to terminate medical benefits once the insured reaches MMI. This assumption is wrong.

No-fault carriers have justified terminating medical benefits based on MMI by distinguishing between curative and maintenance treatment. See, Master Arbitration awards, NF 2720 and 2734. According to the carriers, only treatment which cures or improves the insured's overall medical condition is "necessary". Since Insurance Law § 5102 requires only that the carrier pay for "necessary" treatment, the carriers claim they are justified in terminating benefits once the insured has reached MMI.

The argument is specious, and was recently rejected by a Supreme Court Judge in Onondaga County. Hobby v CNA (Hon. Charles T. Major, Nov. 13, 1998). The case will not be published, but an Oral Decision was read into the record.

Neither the Statute nor the legislative history permit the carrier to terminate medical benefits based on MMI. The Statute provides that the insurer must pay for "all necessary expenses incurred for: medical, hospital . . . service . . . any other professional health services" up to $50,000. Insurance Law §5102; See also, 11 NYCRR §65.12. The insurance regulations promulgated by the Superintendent of Insurance provide that the term "any other professional health services" is "limited to those services that are required, or would be required, to be licensed by the State of New York if performed within the State of New York [e.g., chiropractic and physical therapy treatment]. 11 NYCRR §65.15(o)(1)(vi). The regulations further provide that "professional health services should be necessary for the treatment of the injuries sustained . . ." 11 NYCRR §65.15(o)(1)(vi).

Since neither the Statute nor the regulations mention the term "MMI", but rather refer to "necessary" treatment, the real issue is whether medical treatment which relieves pain symptoms and helps make a motor vehicle accident victim's day-to-day life more bearable, but does not improve her overall medical condition, is medically "necessary" within the meaning of the no-fault law.

The intent of the drafters of a statute or regulation can be ascertained from the words and language used. McKinney's Cons Laws, Statutes, Book 1, § 94, p. 188. The drafters of Section 5102 used the adjective "all" in conjunction with the term "necessary [medical] expenses". Thus, it can be discerned that the drafters intended to give the term "necessary" a broad, all inclusive meaning.

Further, 11 NYCRR §65.15(o)(1)(vi), which requires that the insured pay for any professional health services (i.e., chiropractic treatment and physical therapy) which are "necessary for the treatment of the injuries sustained", nowhere distinguishes between curative treatment and pain treatment. It simply says "treatment", which is again all-encompassing.

Thus, the term "necessary" and the term "treatment" include pain treatment. This plain meaning can be derived not only from a common-sense reading of the Statute and Regulations, but also from the way medicine is practiced. Medical professionals have a duty to eliminate discomfort and pain whenever possible, even though such treatment does not "cure" the patient. This duty, recognized since antiquity, is embodied in the Hypocratic Oath. England, Elizabeth, The Debate on Physician-Assisted Suicide", 16 Pace Law Rev 359, 421, FN 34; Bouvia v Superior Court of the State of California for the County of Los Angeles, 179 Cal.App.3d 1127, 1147, 225 Cal.Rptr. 297, 308 (1986). A large portion of modern medicine is aimed at reducing pain or discomfort or stabilizing a medical condition rather than at curing.

The carriers will often argue that MMI acts as a necessary stop-gate to life-time medical treatment of great cost but insignificant medical value. See, Master Arbitration awards, supra. Again, this argument is not anchored in a fair reading of the Statute and regulations. The legislature did provide a stop-gate to unlimited no-fault medical expenses. That stop-gate is not, however, MMI, but rather the $50,000 no-fault limit. If the legislature had intended to enact a separate MMI stop-gate, it would have done so. For example, it did provide a 3-year stop-gate for lost wages, yet provided no time limit for medical treatment.

Finally, the carrier's position finds no support in the legislative history. Before the No-Fault law was enacted, a victim of a motor vehicle accident could bring an action in Supreme Court against the negligent party for even the most minor injuries. If plaintiff suffered pain symptoms as a result of the accident, she could plead, prove and be compensated for medical treatment aimed at alleviating that pain, even if such treatment would not bring her any overall medical improvement. No law existed which would deny a plaintiff the right to plead, prove and be compensated for her pain treatment after she reached "MMI".

The no-fault law did not change this. Instead, it simply re-allocated the responsibilities so that the no-fault carrier would be responsible for paying for the first $50,000 of medical treatment and lost wages. If the injury was not "serious", the insured's rights to recovery ended here. In sum, the no-fault carrier was to be the exclusive provider of compensation for non-serious injuries. In terminating treatment of injuries based on MMI, the no-fault carrier breaches its duty to provide necessary medical treatment up to the $50,000 limit for such injuries.