



Michigan Court of Appeals Gives Guidance for Setting Attendant Care Rates

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In a published and therefore precedential opinion, a 2-1 majority of the Michigan Court of Appeals has provided guidance for use in calculating the amount to be paid for family-provided attendant care services in a No Fault case. *Hardrick v Auto Club Ins Ass'n*, ___ Mich App ___ (2011), 2011 WL 6003968 (December 1, 2011).

In *Hardrick*, Plaintiff had suffered a traumatic brain injury and his medical providers prescribed 24-7 attendant care "for supervision and safety." Defendant had been paying Plaintiff's parents \$10.50 per hour for these services, but urged that his parents qualified as "behavioral technicians" and thus were entitled to a higher rate. The jury awarded \$28 per hour, and defendant appealed.

The Court observed that:

ACIA relies extensively on *Bonkowski v Allstate Ins Co*, 281 Mich App 154; 761 NW2d 784 (2008), for the proposition that evidence of agency rates for attendant care services "is irrelevant" to establish the rate for family-provided care.

However, *Bonkowski* expressly acknowledged that its analysis of this issue was pure dicta We are, therefore, in no way bound to follow *Bonkowski*. ...

In any event, we disagree with *Bonkowski's* suggestion that agency rates are irrelevant to establish family-care rates[.] ...

We agree that the rates charged by an agency to provide attendant care services are not dispositive of the reasonable rate chargeable by a relative caregiver.

However, this does not detract from the relevance of such evidence.

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The Court of Appeals concluded that agency rates are relevant evidence that may assist a jury in determining a reasonable charge submitted by a family member. Also relevant would be an attendant care provider's wage and the "overhead" incurred (or not) in conjunction with providing such services (e.g., scheduling and coordinating the 24 hour care and managing the business side of the care, such as submitting claims forms). A family member who personally provides attendant care services may also bear an "opportunity cost."

The dissent argued for a "market rate" in determining a reasonable charge for no-fault services.

Defendant also appealed sanctions imposed by the trial court for discovery violations. The Court of Appeals found that the trial court's choice of sanctions was more extreme than entry of a default and thus was an abuse of discretion. The case was remanded for a new trial.

This case is important because it sets out guidelines that a fact-finder may consider in determining whether charges for family-provided attendant care are reasonable. It is not known whether there will be additional appellate proceedings.
