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Plan Administrator Abuses Discretion: Implications for Providers

The United States Fifth Circuit Court of Appeals recently upheld a District Court decision ruling that a health plan violated the Employee Retirement Income Security Act (ERISA) by refusing payment to a hospital for health services it felt were not "*customary and reasonable*."[1] In the case, *Baptist Memorial Hospital-Desoto, Inc. v. Crain Automotive, Inc*., decided on August 19, 2010, the Court held that the plan administrator had abused its discretion in denying the claim.[2]

A member of the Little Rock, Arkansas based Crain Automotive's self-funded health plan (Crain plan) received medically necessary heart stents and inpatient treatment at Baptist Memorial Hospital-Desoto (Baptist Memorial), located in Southhaven, Mississippi, in 2003. The total for the services amounted to more than $41,000. Baptist Memorial was a preferred provider for the health plan, and as such, agreed to discount all inpatient and outpatient services charges the member incurred by 15 percent.[3]

The hospital submitted the claim to CoreSource, the claims processor for the Crain plan, for the cost of services including the 15 percent discount. CoreSource forwarded the explanation of benefits to Crain Automotive and notified Baptist Memorial that it would receive the payment for the claim in full. After several months of non-payment, Larry Crain, Chairman of Crain Automotive, contacted Baptist Memorial to inform them that he believed the charges to be excessive and attempted to make a settlement for a lower amount of money than the claim amount. Baptist Memorial notified Crain that they had already applied the preferred provider discount of 15 percent and would not be reducing the amount of the claim any further. Throughout 2004 there were further communications by Larry Crain and Baptist Memorial regarding the dispute with no resolve. On August 25, 2005, Baptist Memorial filed a suit against Crain Automotive, CoreSource and NovaSys (the Crain Plan's Preferred Provider Organization) under the Employee Retirement Income Security Act (ERISA), 29 U.S.C § 1132 (a) (1) (B) ERISA, 29 U.S.C. § 1132 (g) (1) for recovery of plan benefits and for fees and costs associated with litigation, respectively. The suits against CoreSource and NovaSys were dismissed.[4]

The District Court found: (1) Baptist Memorial was not required to exhaust its administrative remedies because the defendant failed to properly deny the claim; (2) Baptist Memorial suit was not barred by the plan's contractual statute of limitations because its requirement that any suit must be brought with one year of filing a claim was unreasonable; (3) the administrator's interpretation of the plan was legally incorrect and the denial of the claim was an abuse of discretion; and (4) Baptist Memorial was entitled to prejudgment interest. Additionally, the District Court awarded the hospital fees and costs. Crain Automotive appealed and the United States Court of Appeals for the Fifth Circuit affirmed the district court's ruling.[5]

The Court of Appeals did not consider whether Crain Automotive applied a legally correct interpretation of the plan, but instead focused its analysis on whether Crain Automotive abused its discretion in determining the charges were not "customary and reasonable."[6] The Court reasoned that Crain Automotive and its responsible party, Larry Crain, had no evidence upon which to base its decision to deny Baptist Memorial's claim. They examined the basis for Larry Crain's decision, finding that he relied on his own speculation and uninformed assessment of the reasonableness of the charges to conclude that they were not "*customary and reasonable*." The Court further stated that the Crain plan required a statistical review and analysis of the charges in the area for similar services and there was no such review in this situation. Furthermore, the Court found that Crain did not consider the charges for similar services in the same geographical area where Baptist Memorial performed the disputed services and that he did not fully understand what services were actually provided to the plan member. Crain testified that he negotiated a settlement for another plan beneficiary in a different state for an unknown illness, as evidence of his experience with claims negotiation. The Court determined that this one experience in handling claims was insufficient evidence to support the denial of benefits here. The Court concluded that without some evidence in the administrative record that supports a denial of the claim, they must find that the administrator abused its discretion.[7]

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The decision in this case not only has implications for preferred payor rates, but extends to out-of-network providers.[8] This decision upholds previous case law requiring reasonable and customary determinations to be based on factual evidence and prohibiting payors from uniformly adopting a low fee schedule for all out-of-network services. [9]

1 "Fifth Circuit Finds Abuse in Speculation Of "Customary and Reasonable" Charges." Meredith Z. Maresca, BNA's Health Law Reporter, August 26, 2010, http://news.bna.com (Accessed September 16, 2010).

2 "Fifth Circuit Finds Abuse in Speculation Of "Customary and Reasonable" Charges." Meredith Z. Maresca, BNA's Health Law Reporter, August 26, 2010, http://news.bna.com (Accessed September 16, 2010).

3 "Appeals Court Rules Health Plan Administrator Abused Discretion in Determining Discounted Rate was "Unreasonable," Case May Have Implications for OON Providers." Lindsey Dunn, Beckers ASC Review, September 2, 2010.

4 "Baptist Memorial Hospital-Desoto INC v. Crain Automotive INC", United States Court of Appeals, Fifth Circuit pg. 4.

5 "Baptist Memorial Hospital-Desoto INC v. Crain Automotive INC", United States Court of Appeals, Fifth Circuit pg. 5.

6 "Baptist Memorial Hospital-Desoto INC v. Crain Automotive INC", United States Court of Appeals, Fifth Circuit pg. 13.

7 "Baptist Memorial Hospital-Desoto INC v. Crain Automotive INC", United States Court of Appeals, Fifth Circuit pg. 15.

8 "Appeals Court Rules Health Plan Administrator Abused Discretion in Determining Discounted Rate was "Unreasonable," Case May Have Implications for OON Providers." Lindsey Dunn, Beckers ASC Review, September 2, 2010.

9 "Appeals Court Rules Health Plan Administrator Abused Discretion in Determining Discounted Rate was "Unreasonable," Case May Have Implications for OON Providers." Lindsey Dunn, Beckers ASC Review, September 2, 2010.

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Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS** (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

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