

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ENDORSED
FILED
San Francisco County Superior Court
DEC 21 2020
CLERK OF THE COURT
BY: R. MICHAEL DILES
Deputy Clerk

AHMED MONEIM, DDS, et al.,

No. CGC-18-565581

Plaintiffs,

vs.

STATEMENT OF DECISION (PHASE I)

DELTA DENTAL OF CALIFORNIA,

Defendant.

By agreement of the parties, an issue in this putative class action was severed for a two-day bench trial: whether the 365-day limitation in California Code of Regulations §1300.71(b)(5) applies to the reimbursement request letters Delta Dental of California issued to the plaintiffs.

Factual and Legal Background

Plaintiffs Ahmed Moneim, Joyce Tse and Charina Bailon are dentists who provide services under Delta Dental plans. Delta Dental paid the dentists for work on patients, but later requested records for dozens of the patients. After audits, Delta Dental requested reimbursement for claims previously approved and paid. Many of these claims had been paid more than 365 days before Delta Dental's reimbursement requests. Reimbursement letters stated: "Based on our review of the records you submitted, we have determined that there are areas in the bookkeeping and administration of your practice which need to be addressed under the terms of your participation with Delta Dental."

California Code of Regulations §1300.71(b)(5) states: “A plan shall not request reimbursement for the overpayment of a claim...unless the plan...sends a written request for reimbursement to the provider within 365 days of the Date of Payment on the over paid [sic] claim...The 365-day time limit shall not apply if the overpayment was caused in whole or in part by fraud or misrepresentation on the part of the provider.”

Legal Analysis

Plaintiffs assert that CCR §1300.71(b)(5) applies to Delta Dental’s reimbursement request letters to them. Delta Dental asserts that it does not, for two reasons: “the letters fall within the Regulation’s fraud/misrepresentation exception” and “the Regulation’s 365-day rule only applies to auto-recoupment.” (Delta Dental’s Opening Post-Trial Brief (DDPTB) 1:17-18.)

Fraud Exception. By statute, a plan’s overpayment notices to dentists such as our plaintiffs must give “a clear explanation of the basis upon which the plan...believes the amount paid on the claim was in excess of the amount due.” (Health & Safety Code §1371.1; see also CCR §1300.71(d)(3).) A superior court case both sides cite states that this “clear explanation” must include “why the plan believes the overpayment was caused in whole or in part by fraud or misrepresentation on the part of the provider.” (*Blue Cross of California v. Rouillard* (2014) WL 10291689 *12.) Otherwise, §1300.71(b)(5)’s 365-day time limit applies, its fraud exception does not, and reimbursement “shall not” be requested from a dentist. (Id.)

Delta Dental concedes that none of its letters to the plaintiff dentists ever used the words “fraud” or “misrepresentation.” Instead, Delta Dental’s letters told the dentists its audits “determined that there are areas of the bookkeeping and administration of your practice which need to be addressed.” Delta Dental nonetheless argues that it satisfied its obligation to clearly explain to the dentists their “fraud or misrepresentation” by also using terms like “upcoding” and

“unbundling.” However, both sides’ experts testified at trial that most dentists do not know what those terms mean. (Tr. 206, 245.)¹ Thus, Delta Dental failed to give the “clear explanation” the law requires.

Auto-Recoupment. One way a plan like Delta Dental can recover overpayments from dentists is auto-recoupment – automatic deduction from future claims made. While conceding it never raised this issue during the trial (DDPTB 4:5), Delta Dental now argues that §1300.71(b)(5)’s “365-day rule only applies to auto-recoupment.” And since Delta Dental has not – at least not yet – auto-recouped from the plaintiff dentists, it says the 365-day rule does not apply here. The argument fails.

Most importantly, §1300.71(b)(5)’s plain language applies to *every* “request [for] reimbursement for the overpayment of a claim.” How reimbursement is later effectuated is unmentioned and thus immaterial to §1300.71(b)(5)’s requirements, including most notably its 365-day time limit.

These points are further illustrated by Delta Dental’s unavailing efforts to shoehorn auto-recoupment into §1300.71(b)(5):

First, Delta Dental says a companion regulation – §1300.71(d)(6) – “expressly provides for auto-recoupment.” Actually, “auto-recoupment” appears nowhere in (d)(6) and the subsection’s reference to “offset” does not make that the exclusive means of reimbursement.² Indeed, the preceding subsection – §1300.71(d)(5) – addresses “reimbursement” not limited to offset or auto-recoupment.

¹ It appears that no such evidence was introduced in *Rouillard*; none is mentioned in the ruling.

² Delta Dental effectively concedes this point by repeatedly stating that auto-recoupment is one *example* of multiple “remedies.” (DDPTB 1:23-24; Delta Dental’s Post-Trial Reply Brief 1:6-8.)

Second, Delta Dental says regulators have “stated that” §1300.71(b)(5) “applies only to auto-recoupment.” Again, Delta Dental’s clips from legal briefs do not so state, much less make public policy.

Third, *Rouillard* is cited as stating that the “365-day period must be limited to auto-recoupment in order to avoid a conflict with statutory limitations periods.” *Rouillard* says no such thing. Rather, it found that “existing statutes of limitations do not prohibit...time-based regulatory requirements for claim settlement practices.” (Id. at 2014 WL 10291689 *6.)

Finally, Delta Dental seeks to avoid §1300.71(b)(5)’s 365-day rule by re-labeling its reimbursement request letters “demand letters.” However, when framing the issue for this trial, Delta Dental referred to its letters as the former, not the latter. Moreover, gentle reminders to address “bookkeeping and administration” deficiencies are not the stuff of demand letters.

Disposition

I find that the 365-day limitation in California Code of Regulations §1300.71(b)(5) applies to the reimbursement request letters issued by Delta Dental of California to plaintiffs Ahmed Moneim, Joyce Tse and Charina Bailon.

Rulings on Objections to Proposed Statement of Decision

After the proposed statement of decision issued, Delta Dental filed a document titled “Objections to Proposed Statement of Decision” – largely a third post-trial brief. The “objections” are overruled:

1:4-9:11: Delta Dental’s “objections to principal errors of law” are addressed in the statement of decision.

9:15-17: As noted in the statement of decision’s first sentence, the “central question” for the Phase I trial was set by the parties: whether the 365-day limitation of California Code of

Regulations §1300.71(b)(5) applies to the reimbursement request letters Delta Dental issued to the plaintiffs. The statement of decision addresses that issue.

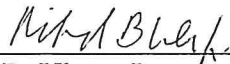
9:18-19, 10:26-11:11: As addressed in the statement of decision, Delta Dental is now recasting its reimbursement request letters as “demand letters.” As also noted, they were – in fact and law – not demand letters, and remedies for demand letters was not an issue the parties set for the Phase I trial in any event.

9:20-27: As noted in the statement of decision, there was no trial evidence from any regulator that they interpreted §1300.71(b)(5) in the way Delta Dental desires. The most adduced were vague snippets of lawyer argument, not any policy statement. As also addressed in the statement of decision, Delta Dental misstates the *Rouillard* opinion.

10:5-22: As shown in the statement of decision, what is required under §1300.71(b)(5) is a “clear explanation” *to the dentist* of why Delta Dental “believes the overpayment was caused in whole or in part by fraud or misrepresentation.” Whether the explanation was clear to Delta Dental’s expert or its employees is not the issue.

Delta Dental’s request for Code of Civil Procedure §166.1 certification is denied. I find no “substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation.” (See *id.*) Rather, an interlocutory appeal would unnecessarily delay conclusion of the litigation and run afoul of California’s one final judgment rule. (CCP §904.1.)

Dated: December 18, 2020



Richard B. Ulmer Jr.
Judge of the Superior Court

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3 **CERTIFICATE OF SERVICE BY MAIL (C.C.P. §1013)**

4 The undersigned certifies, under penalty of perjury, that: I am employed in the city and
5 County of San Francisco, California, am over the age of 18 years, and am not a party to
6 the within action. I served the attached **Statement of Decision (Phase 1)** by enclosing
7 a true copy thereof in an envelope(s) addressed as shown below and placing the
8 envelope(s) for collection and mailing on **December 21, 2020** in San Francisco,
9 California following the Court's ordinary practices. I am readily familiar with the Court's
10 practice for collecting and processing correspondence for mailing. On the same day
11 that correspondence is placed for collection and mailing, it is deposited in the ordinary
12 course of business with the United States Postal Service in a sealed envelope with
13 postage fully prepaid.

9 **Ronald P. Goldman, Esq.**
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15 **Dated: December 21, 2020**

16 By: 
17 **R. Michael Diles**
18 **Deputy Court Clerk**