

## COA Opinion: Attorney-fee award against insurer that denied two claims may be upheld where the denial was reasonable as to only one of the claims, if the attorney's work cannot be separated by claim

12. March 2010

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In *Tinnin v. Farmers Insurance Exchange*, No. 286141 (published Mar. 11, 2010), the Court of Appeals affirmed the entire amount of attorney fees awarded under MCL § 500.3148(1) against an insurer where the insurer's failure to pay one component of medical expenses was unreasonable, but the insurer's decision to not pay another component was reasonable.

After being hit by a car and sustaining a head injury, Dolphus Tinnin sought reimbursement from his insurance company for both attendant care and rehabilitation treatment. For about two and a half years, the insurer reimbursed Mr. Tinnin for the attendant care and other medical expenses, but then the insurer conducted two independent medical evaluations of Mr. Tinnin to determine whether to continue paying his expenses. One doctor addressed the issue of rehabilitation treatment and concluded that Mr. Tinnin did not need ongoing physical rehabilitation, but the doctor also stated it would be reasonable for Mr. Tinnin to continue to see a rehabilitation specialist "as needed" to monitor his condition. Another doctor addressed whether Mr. Tinnin needed attendant care and concluded that while he did need the attendant care, he needed it not because of the accident, but because of a pre-existing condition. Based on these evaluations, the insurer denied both claims. Mr. Tinnin sued for \$90,000 in attendant care and for the cost of four rehabilitation visits. Following a trial, the jury awarded Mr. Tinnin's estate (he died before the litigation ended) \$1,235 for the rehabilitation visits, but did not award any of the requested \$90,000 in attendant care costs. The trial court granted the estate's motion for \$57,690 in attorney fees based on the conclusion that the insurer's failure to pay for the rehabilitation visits was unreasonable when the independent doctor concluded he should be allowed to visit "as needed."

The Court of Appeals, in a per curiam opinion, upheld the award of attorney fees because the trial court's decision that it was unreasonable for the insurer to deny the claims for the rehabilitation visits was not an abuse of discretion. The Court also rejected the insurer's argument that the award of \$57,690 in attorney fees was an unreasonable amount in light of the small damages award of only \$1,235. The Court noted that the billable rate and the hours worked by the attorney were reasonable, and, because the issues relating to the rehabilitation were interrelated with the attendant-care issues, it was not possible based on the evidence in the record to separate out what work was done on the claim that was unreasonably denied and what was done on the one claim that was reasonably denied. Accordingly, the Court determined that the trial court did not abuse its discretion when it refused to attempt to apportion the attorney fees based on which claim the work supported.