

ADVISORY NO. 246

TOPIC: **IMPORTANT SOAH DECISIONS REGARDING MEDICAL BENEFITS**

Two new cases suggest new bad faith defenses in certain catastrophic injury cases involving a carrier's obligation to furnish medical benefits.

The first decision rejects a claimant's request that the carrier furnish a modified vehicle. The second decision finds that home health care services rendered by a friend or family member must be preauthorized pursuant to the Act. Both cases were defended by attorneys from Flahive, Ogden & Latson.

The first claimant contended that she was entitled to a full-size pickup truck with a crane lift in order to provide her with greater mobility. Her compensable injury causes her difficulty in getting into a standard car or using foot controls with her left leg; the crane lift would load her wheelchair into the truck. The claimant argued that a modified vehicle met the definition of a medical benefit because it would relieve the effects of her compensable injury, promote her recovery and enhance her ability to return to work.

SOAH rejected the claimant's arguments based upon a review of the statutory definition of "health care." SOAH concluded that, since the statute repeatedly and emphatically uses the adjective "medical" in describing health care, neither a full-size pickup truck, nor modifications to accommodate a physical handicap, falls within the definitions of health care or of durable medical equipment.

In the second case, SOAH found that a claimant's "significant other" is a health care practitioner providing home health services for purposes of preauthorization. The claimant suffers paralysis. His friend, who lives with him, provided services to assist him with daily hygiene and physical needs. The claimant argued that because the person providing the care was not a licensed health care professional, preauthorization was not required to perform reimbursable home health care services.

Again, SOAH rejected the claimant's arguments. If the care is reimbursable, it is reimbursable as health care. If it is reimbursable as health care, the preauthorization rule applies.

These cases are both subject to appeal to district court. The final decisions may influence bad faith liability. Cases like these are often lightning rods for bad faith threats because of the serious injuries involved and the carrier's tendency to err on the side of caution when providing medical services in such claims. However, bad faith cannot exist where there is no duty. Therefore, should this rule of law prevail, there should be no bad faith in denying a modified vehicle as a medical benefit. And there should be no bad faith in denying reimbursement for home health care provided by a friend or family member of the claimant if that care was not preauthorized. We will keep you informed of developments.

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In the meantime, if you have a pending bad faith case involving these issues, you should alert your defense counsel to these two decisions.

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