

Divided Supreme Court Clarifies Florida's Collateral Source Rule: "Future Medicare benefits are both uncertain and a liability under *Stanley*, due to the right of reimbursement that Medicare retains"

On October 15, 2015, the Supreme Court of Florida, in a 5-2 decision, overturned a decision of the Second District Court of Appeal, and held that the plaintiff's eligibility for future benefits "from Medicare, Medicaid, and other social legislation" was properly excluded as evidence under the collateral source rule. *Joerg v. State Farm* (SC13-1768) (quashing *State Farm v. Joerg*, 38 Fla. L. Weekly D1378) (Fla. 2d DCA June 21, 2013).

It is well established in Florida that the admission of evidence of social legislation benefits such as Medicare, Medicaid, or Social Security is considered highly prejudicial. However, a ruling by the 1984 Florida Supreme Court in *Stanley* provided an important, although narrow exception to the common law evidentiary collateral source rule precluding the admission of such evidence. 452 So. 2d 514.

The plaintiffs in *Stanley* alleged that the defendants' medical malpractice caused their son to suffer intellectual disability and cerebral palsy. After the plaintiffs presented evidence of future damages, the court permitted the defendants to introduce evidence of "free or low-cost charitable and governmental programs available in the community to meet" the needs of plaintiff's son. The court noted that such benefits, being "available to all citizens," should be considered by the jury its determination of the reasonable cost of future care to prevent undeserved windfalls to plaintiffs.

Following *Stanley*, the Florida promulgated section 768.76, Florida Statutes. The statute requires trial courts to reduce damage awards by the amount of benefits paid or otherwise available to claimants, from all collateral sources; however, there are no reductions "for collateral sources for which a subrogation or reimbursement right exists." Specifically, the statute provides that benefits received under Medicare or similar programs which provide for a lien on or a right to reimbursement from the plaintiff's recovery are not considered collateral sources.

The plaintiff in the case below, a developmentally disabled adult named Luke, is entitled to reimbursement from Medicare for his medical bills due to his disabilities. Luke was riding his bike in Venice, FL in 2007 when he was struck by a car. Luke's father (Joerg), on Luke's behalf, filed a negligence action against his uninsured motorist carrier (State Farm), and subsequently filed a motion in limine to exclude evidence of any collateral source benefits to which Luke was entitled, including discounted benefits under Medicare and Medicaid.

The trial court allowed State Farm to introduce evidence of "future medical bills for specific treatment or services that are available ... to all citizens regardless of their wealth or status." However, it specifically precluded State Farm from introducing evidence of Luke's future Medicare or Medicaid benefits. After a four-day trial, the jury returned a verdict in favor of Joerg, and awarded a total of \$1,491,875 in damages, including \$469,076 for future medical expenses.

On appeal, although the 2nd DCA noted that the promulgation of section 768.76 left the viability of *Stanley* in question, it ultimately relied on *Stanley* in holding that Luke's benefits were "free and unearned" and therefore admissible. In reaching its conclusion that Luke's future Medicare benefits were "unearned," the 2nd DCA deemed the benefits as "free or low-cost" to Luke since he had never worked or contributed to the Medicare program. Quoting *Stanley*, The 2nd DCA further reasoned that such evidence is not prejudicial because the jury "remains free to find" the public services to be inadequate, noting "the jury may find private care at higher cost more appropriate in some circumstances."

Although it appeared that *Stanley* created an exception to the collateral source rule, the Court in *Stanley* had not clarified whether it applied to programs such as Medicare, Medicaid, or Social Security. Notably, it was nearly 30 years later before the 2nd DCA in the case below became the first court to definitively rule that evidence of such future benefits was admissible under the *Stanley* exception.

In light of the 2nd DCA's ruling, Joerg sought review from the Florida Supreme Court on the ground that the 2nd DCA's decision was in direct and express conflict with the Court's decision in *Stanley*. The Court agreed with Joerg that the 2nd DCA "misapplied *Stanley*," and accepted jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution. In recognizing "the need to recede" from its holding in *Stanley*, the Court went on to quash the 2nd DCA's decision:

The Second District determined that because there was no evidence that Luke paid for his Medicare benefits, these benefits were free and unearned under *Stanley*. Not only does this conclusion overlook details contained within the record, but it also ignores the discussion in *Stanley* that collateral sources may qualify as an expense, obligation, or liability to the plaintiff... We conclude that future Medicare benefits are both uncertain and a liability under *Stanley*, due to the right of reimbursement that Medicare retains.

Regarding the "details contained within the record" that the Court felt were overlooked, the Court considered pertinent the fact that State Farm, which had the burden of proving that Luke did not incur an "expense, obligation, or liability" in obtaining the benefit at issue, "had ample opportunity to seek further discovery and controvert Joerg's assertion that a portion of Luke's Social Security benefits were assessed to pay Medicare and that his benefits were therefore not free."

The Court explained that "Medicare is authorized to make conditional payments in the event that a primary payer has not made or cannot reasonably be expected to make" prompt payment. And further, that the Medicare regulations extend the subrogation right to "any judgments or settlements related to injuries for which Medicare paid medical costs, thereby casting the tortfeasor as the primary payer."

Citing to the Black's Law Dictionary definition of "liability," the Court pointed out that "with such enforcement tools, future Medicare benefits constitute a serious liability for all beneficiaries." In concluding that the benefits provided to Luke are not free, the Court reasoned that "regardless of whether an individual has directly paid for his or her Medicare benefits... all Medicare beneficiaries who

receive an award for future medical damages will be liable to reimburse Medicare, if Medicare makes a conditional payment on their behalf.”

Drawing a distinction, the Court explained that the benefits at issue in *Stanley* were “free or low-cost” because they were community based special needs education and therapy that would not leave the plaintiff liable for reimbursement, as occurs with Medicare and Medicaid.

In further support of its holding, the Court noted the public policy concerns it shared with the *Stanley* dissent, wherein Justice Shaw explained:

There is simply no assurance that public assistance will continue, that the injured victim will continue to be eligible for such assistance if it continues, or that the assistance, if it continues, will continue at the same level... I cannot agree that an injured victim should be required to seek charity or public aid, or that the compassion of charitable contributors and taxpayers should become a device for reducing the legal liability of a tortfeasor.

The Court noted that these policy considerations, along with the apparent difficulty faced in applying *Stanley*, have led district courts of appeal to frequently limit *Stanley* to its facts or find that *Stanley* simply does not apply. The Court went on to “agree with the dissent in *Stanley* that tortfeasors—and here, those who insure against the actions of tortfeasors—should not enjoy such a windfall at the expense of taxpayers who fund social legislation benefits.”

In conclusion, the Court explained that affirming the 2nd DCA’s decision “would result in a new trial in which State Farm would be permitted to present confusing, prejudicial, and speculative evidence of Luke Joerg’s future entitlement to Medicare benefits, when State Farm would not otherwise be permitted to seek a reduction of the value of these benefits from any award Joerg might receive. This we cannot allow.”

Justice Polston, in dissent, wrote that the “Court does not have the constitutional authority to review this case” because the 2nd DCA’s decision “does not expressly and directly conflict with this Court’s decision in *Stanley* on the same question of law.”

Because “no record evidence shows that Luke contributed to the financing of the Medicare program,” Justice Polston concluded that Luke’s Medicare benefits “are unearned under *Stanley* and not subject to exclusion under the collateral source rule.... Accordingly, because both this Court in *Stanley* and the Second District in *Joerg* concluded that only government benefits earned in some way by the plaintiff should be excluded from evidence under the collateral source rule, no conflict exists.”

For now then, *Joerg* is the law of the land. The Court’s ruling is a victory for plaintiffs seeking future damages, as defense attorneys appear to have lost a useful litigation tool to manage these claims. With the death of the *Stanley* exception, increased use of “medical billing experts” may be necessary to fill the void.