

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PRESBYTERIAN HOMES, INC. d/b/a,	:	NO. 15 – 01,332
SYCAMORE MANOR HEALTH CENTER,	:	
Plaintiff	:	
vs.	:	
	:	CIVIL ACTION
MILDRED J. BAIR,	:	
Defendant	:	NON-JURY TRIAL

**ORDER and VERDICT**

AND NOW, this 14<sup>th</sup> day of **October, 2016**, after a non-jury trial held on September 23, 2016, and the record having been left open at the request of Defendant’s attorney for submission of a document with reported concurrence, and Defendant’s attorney advising the Court on October 10, 2016 that there was no agreement by the Plaintiff to submit the document, the Court enters verdict in favor of Mildred J. Bair and against Presbyterian Homes, Inc. d/b/a/, Sycamore Manor Health Center.

**FINDINGS OF FACT**

1. On August 9, 2016, the parties entered a standard written admission agreement when Defendant was entered into Plaintiff’s nursing facility that same date. See, Plaintiff’s Exhibit A.
2. On or about October 17, 2012, Plaintiff completed the paperwork for Mrs. Bairs signature to apply for Medicaid.
3. At all times Defendant was covered by United Healthcare insurance.
4. The Court finds Defendant’s Daughter, Darlene Mitcheltree, fully credible.
5. Mrs. Bair voluntarily discharged herself from the facility on December 11, 2012, as soon as she was informed.
6. The total amount claimed due that was not paid by other sources is \$19,029.59.

7. Plaintiff was made aware that Defendant had supplemental health insurance through United Health Care.
8. On October 17, 2016, the Medicaid application was denied. Notice was sent to Sycamore Manner on behalf of Mildred Bair because they were designated to receive a copy of the notice on her behalf.
9. Plaintiff failed to inform Mrs. Bair or anyone in her family on her behalf of the denial or appeal.
10. The course of conduct was that the nursing home undertook to obtain the proper coverage by Medicare, Medicaid and from supplemental insurance.
11. The course of conduct was that the resident would be responsible only for the amounts that nursing home, with reasonable diligence, was unable to obtain from Medicaid, Medicare or United Health.
12. There was insufficient evidence that the Plaintiff performed with reasonable diligence the securing and processing of claims for payment by Medicaid or United Health.
13. No evidence that notified Mrs. Bair of a denial from United Health or that there was a problem with coverage.
14. The application was prepared by the business manager who failed to obtain pertinent information for the successful completion.
15. At all relevant times, Mildred Bair was covered by Medicare Part A, Medicare Part B and United Healthcare.
16. Plaintiff failed to provide Mildred Bair with notice of non-coverage from Medicare.
17. Plaintiff failed to notify any family member that Medicare would not be providing coverage for her continued stay.

18. Having undertaken to do so, Plaintiff failed to exercise reasonable care in preparing an application for eligibility for long term care with Medicaid, including the failure to contact family members for assistance in gathering financial records or to inform them such an application was being made.
19. Having undertaken to do so, Plaintiff failed to exercise reasonable care in billing Mildred Bair's additional insurance company, United Healthcare, including the failure to contact family members to provide any further information needed to process the claim and to notify family members as to any problems with the claim so that any problems could be cured by the family.
20. Mildred Bair wanted to leave the facility and return home but Plaintiff provided information to the family that obstructed her wishes.
21. As soon as Plaintiff informed the family that Mildred Bair could leave the facility, Mildred Bair voluntarily obtained discharge from the facility against medical advice on December 11, 2012.
22. Since that time, Mildred Bair has become a resident at another facility and United Healthcare is being utilized for payment.

#### **CONCLUSIONS OF LAW**

1. Plaintiff failed to establish by a preponderance of the evidence that it was entitled to payment from Mildred J. Bair.
2. Having undertaken to do so, Plaintiff failed to exercise reasonable care in billing Mildred Bair's additional insurance company, United Healthcare, and applying for and obtaining any available payment from Medicare and/or Medicaid, which was a prerequisite for collecting from Mildred Bair in light of the undertaking and agreement.

3. The prior course of dealing between the parties was that Plaintiff undertook to secure payment by Mildred Bair's insurance company, Medicare and/or Medicaid before seeking payment from Mildred Bair.
4. Plaintiff failed to mitigate damages by failing to exercise reasonable care in billing Mildred Bair's additional insurance company, United Healthcare, and applying for and obtaining any available payment from Medicare and/or Medicaid.
5. Plaintiff failed to mitigate damages by timely informing Plaintiff as to non-payment so that Defendant could incur fewer costs by leaving their facility.

### **Discussion**

Plaintiff filed breach of contract for payment of services for Defendant's stay at a nursing home. A breach of contract requires the existence of a contract, a breach of a duty imposed by the contract and damages. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 716 (Pa. Super. 2005). To recover damages, the party "must be able to prove such damages with reasonable certainty." Wilcox v. Regester, 417 Pa. 475, 484, 207 A.2d 817 (Pa. 1965). "[A] party who suffers a loss due to the breach of a contract has the duty to make reasonable efforts to mitigate his losses." Somerset Community Hosp. v. Allan B. Mitchell & Assocs., 454 Pa. Super. 188, 204-205, 685 A.2d 141, 150 (Pa. Super. 1996)(citation omitted.) "The burden to prove this duty to mitigate is placed on the party who actually breaches the contract; the breaching party must show how further loss could have been avoided through the reasonable efforts of the injured party." Id.

In the present case, by the terms of the contract, as was with the course of dealing between the parties and by its own undertaking, Plaintiff undertook to bill Mildred Bair's additional insurance company, United Healthcare, and apply for and obtaining any available payment from

Medicare and/or Medicaid, which was a prerequisite for collecting from Mildred Bair in light of the undertaking and agreement. Failure to use reasonable care in this undertaking resulted in nonpayment from those sources. Further, the plaintiff failed to mitigate damages by failing to use reasonable care in securing payment for United Healthcare, Medicare and/or Medicaid. Plaintiff failed to mitigate damages by timely informing Plaintiff as to non-payment so that Defendant could incur fewer costs by leaving their facility. Plaintiff has not proved damages.

Accordingly, the Court enters the following Order and Verdict.

ORDER AND VERDICT

AND NOW this **14<sup>th</sup>** day of **October, 2016**, following a non-jury trial in this matter, it is ORDERED and DIRECTED that verdict is entered in favor of Defendant, Mildred J. Bair, and against Plaintiff, Presbyterian Homes, Inc. d/b/a/ Sycamore Manor Health Center.

BY THE COURT,

October 14, 2016  
Date

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Richard A. Gray, J.

cc: William T. Molczan, Esq. & Matthew D. Urban, Esq.,  
Weltman, Weinberg & Reis Co., LPA  
436 Seventh Avenue, Suite 2500, Pittsburgh, PA 15219  
Robert Hoffa, Esq.