

WHAT TO DO IF YOU ARE INJURED IN AN AUTO ACCIDENT

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INTRODUCTION

Whether we want to admit it or not, motor vehicle accidents have become an unfortunate fact of life in our fast paced society. The misfortune of motor vehicle related injury is something we tend to think will only happen to somebody else. The statistics, however, demonstrate that motor vehicle accidents happen with such frequency that no one should consider themselves immune. That is why we should all have a fundamental understanding of what we must do to protect ourselves and our families if we suffer the misfortune of sustaining personal injury in a motor vehicle collision.

The starting point is to first develop some basic knowledge about our legal rights under Michigan law. In this regard, it is important for us to realize that Michigan is a ***no-fault jurisdiction***. In that regard, Michigan is in the minority of other states in the country, the vast majority of which are not no-fault jurisdictions. There are presently only about 14 states that have a no-fault system. The Michigan no-fault law has been in effect since 1973 and has, over the years, become a very complicated system.

Under the Michigan no-fault statute, all victims of motor vehicle injury are guaranteed certain basic insurance benefits regardless of who caused the accident. In exchange for guaranteeing these benefits, the Michigan no-fault law significantly impacts the right of motor vehicle accident victims to bring liability claims against the negligent parties who inflict the injury. It is important to always remember that under Michigan law, every person who sustains personal injury in a motor vehicle accident potentially has ***two separate and distinct claims***.

The first claim is for ***no-fault personal insurance protection benefits***. These benefits are frequently called "PIP benefits" or "no-fault benefits." These benefits (which will be discussed below) are usually paid to the victim by his or her own automobile insurance company. The victim is entitled to these benefits without regard to who caused the accident. The second claim is referred to as the ***residual bodily injury liability claim***. This claim is also called the "negligence claim" or the "tort claim." This claim can be brought by the injured victim against the party who caused the accident, provided that the victim can satisfy the statutory prerequisites for making such a claim. If the victim is entitled to pursue a liability claim, the victim can recover compensation for certain kinds of damages that are not compensable by no-fault PIP benefits.

Persons sustaining accidental bodily injury in a motor vehicle accident must have a clear understanding of these two separate claims in order to properly protect themselves. Accordingly, the two claims will be discussed separately below.

I. PURSUE YOUR CLAIM FOR NO-FAULT BENEFITS

Obviously, the most immediate and important concern for an auto accident victim is to get the proper medical care and to maintain a flow of income into his or her household during an accident related disability. In order to do this, the accident victim must pursue his or her claim for no-fault PIP benefits. As previously stated, no-fault PIP benefits are guaranteed regardless of whether the injured person was at fault for the accident and regardless if the injured person was driving a car, was a passenger, a pedestrian, a bicyclist or other type of non-occupant. Customarily, no-fault PIP benefits are paid by the victim's own insurance company. However, under certain circumstances, PIP benefits may be payable from the insurance company of the striking vehicle or the insurance company of the vehicle occupied. In the vast majority of accidents, however, the victim will first look to his or her own insurance company.

Under the Michigan no-fault statute, there are four types of no-fault PIP benefits. These benefits are designed to compensate the injured victim for **economic loss** that has been incurred as a result of injury. These four no-fault PIP benefits consist of the following:

A. Allowable (Medical) Expenses

The Michigan no-fault statute contains the most generous medical expense provision of any no-fault law in the United States. Under the Michigan system, a no-fault insurance company is legally obligated to pay a victim's "allowable expenses." These expenses are statutorily defined as "*all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation.*" The allowable expense benefit includes hospital and physician charges, prescriptions, in-home nursing care, physical therapy and rehabilitation, vocational rehabilitation, medical mileage, artificial limbs, orthopedic appliances, etc. In fact, in cases of severe injury, the Michigan courts have held that the allowable expense benefit includes the obligation to pay for renovations to a home or apartment, and in some cases, to even construct a new residence for a catastrophically injured person if such accommodations are now reasonably necessary for the patient's care, recovery and rehabilitation. In addition, the courts have, under certain circumstances, required an insurance company to pay "room and board expenses" if an accident victim would otherwise require institutionalization were it not for the fact that the victim is cared for at home.

The courts have also held that family members who provide attendant care or nursing care to injured victims at home are entitled to be compensated for the fair value of those services. Where special transportation is required (such as handicapper equipped automobiles, handicapper vans, etc.), the courts have also obligated insurance companies to pay for the cost of those vehicles. The allowable expense benefit also includes reimbursement for mileage to and from reasonably necessary medical care. In the cases of severely injured victims who require the appointment of a guardian or conservator, Michigan courts have held that such probate related expenses are also included as part of the allowable expense benefit.

It is important for accident victims to understand that the allowable expense benefit is **payable for life** and is **unlimited in amount**. The only requirement is that the expense be "reasonable" in amount and that the service, product or accommodation for which the expense is charged is reasonably necessary for the injured person's care, recovery or rehabilitation.

B. Work Loss Benefits

An accident victim is also entitled to recover no-fault PIP benefits for a loss of income the injured person "*would have performed*" had he or she not suffered injury in the accident. This work loss benefit is payable for three years and is limited to 85% of the victim's gross income.

Furthermore, the monthly benefit is subject to a monthly maximum which is adjusted each year. At the present time, for accidents occurring after October 1, 1999, the monthly work loss benefit is \$3,760. The statute also provides that wage loss benefits are payable to "*temporarily unemployed persons*" based upon "*earned income for the last month employed full time preceding the accident.*"

C. Replacement Service Expenses

Under the Michigan system, an injured person is also entitled to receive a personal service allowance not to exceed \$20 per day to reimburse the victim for expenses reasonably incurred "in obtaining ordinary and necessary services" in lieu of those that the victim would have performed for the benefit of the victim or the victim's dependents had the victim not been injured. This benefit is called the "*replacement service expense*" benefit and is typically payable when an injured person can no longer perform domestic related tasks such as house cleaning, lawn work, cooking, babysitting, etc. In these situations, the injured person is allowed to be reimbursed up to \$20 per day to hire other people, including family members, to perform these services.

D. Survivor's Loss Benefits

If a motor vehicle accident results in death, the no-fault statute provides for payment of "survivor's loss benefits" to the dependents of the decedent. These survivor's loss benefits are payable for a three year period and are subject to the same monthly maximum that is applicable to wage loss benefits. Survivor's loss benefits compensate a decedent's dependent for a "loss of contributions of tangible things of economic value" that the dependents would have received "for support" during their dependency if the decedent had not died. Survivor's loss benefits include not only the after tax income of the decedent but also the value of fringe benefits which the decedent's dependents have lost as a result of the decedent's death. In addition, survivor's loss benefits include a replacement service expense component identical to the replacement service expense benefit discussed above.

The Michigan no-fault statute also contains complex provisions for the set off of governmental benefits from no-fault benefits and for the coordination of private insurance benefits. The no-fault statute states that any benefits "provided or required to be provided" by the laws of any state or federal government (such as workers compensation or social security disability benefits) shall be a dollar for dollar reduction from like kind no-fault benefits. Similarly, under certain circumstances, no-fault benefits must be coordinated with other health and accident coverages if the injured person has purchased "coordinated no-fault." In those situations where the injured person's no-fault coverage is coordinated, the no-fault insurer only pays those allowable expenses and work loss benefits that are not paid by private health and disability insurance coverages. If, however, the victim has purchased uncoordinated no-fault coverage, it is sometimes possible for the victim to recover under both the no-fault policy and the other health and disability policy.

The Michigan no-fault statute also contains very specific provisions addressing how no-fault benefits must be claimed and when they are payable. In this regard, there are two important rules to remember.

First, an accident victim must give his or her no-fault insurance company written notice in order to be legally entitled to receive PIP benefits. This written notice must be provided within one year of the date of the accident and must set forth the name and address of the claimant and a summary of the time, place and nature of the injuries. Second, the statute also contains a one year enforcement rule. This means that if a particular expense has not been paid by the no-fault insurance company, legal action must be filed within one year of the date that particular expense was incurred or payment for that particular expense will not be enforceable. Therefore, it is very important for accident victims to process their PIP claims expeditiously and to seek legal advice if a benefit has not been fully paid within a few months after it has been submitted. If an insurer does not pay a claim within 30 days of receiving “reasonable proof of the fact and amount of the loss” the insurer is obligated to pay interest at the rate of 12% per annum.

It is also important to note that the Michigan courts have recognized certain exceptions to these one year time rules. For example, if an accident results in catastrophic injury which renders the victim incapable of fully appreciating his or her legal rights, then the one year rules may very well not apply. *This is often the case with persons sustaining serious traumatic brain injury. In addition, the courts have held that the one year rule does not apply to children.* Nevertheless, it is always preferable to avoid any unnecessary delay in processing no-fault PIP claims.

The no-fault statute contains an important disqualification that excludes owners of uninsured vehicles from receiving PIP benefits if the uninsured vehicle is involved in the accident. Therefore, it is critically important that the owners of vehicles maintain continuous no-fault coverage in effect.

The Michigan no-fault statute also entitles motorcyclists to recover no-fault PIP benefits if they sustain injury in accidents involving “motor vehicles” (i.e., cars and trucks). However, in order for the owner of the motorcycle to claim no-fault benefits, the law requires that the motorcycle owner purchase mandatory PLPD coverage on the motorcycle. Failure to do so disqualifies the motorcycle owner from recovering no-fault benefits.

As can be seen from the foregoing discussion, no-fault PIP benefits are critically important to auto accident victims and these claims should be pursued diligently. ***Even though these no-fault PIP benefits are payable without regard to fault and were intended by the Legislature to be paid without the involvement of the court system, the harsh reality is that no-fault insurance companies frequently deny various aspects of a victim’s no-fault PIP claim.*** In recent years, no-fault insurers have become particularly aggressive with regard to the way they process the PIP claims of catastrophically injured persons. If claim disputes cannot be resolved, accident victims should not hesitate to exercise their legal rights and force no-fault insurance companies to honor their statutory obligations to pay no-fault PIP claims. There are many kinds of disputes which routinely arise in the processing of PIP claims, including the following: disputes as to the amount or necessity of medical expenses; disputes as to the amount or necessity of attendant care or replacement services; disputes as to reasonableness or necessity of accommodations and transportation services; disputes as to medical causation; disputes as to work disability and earnings levels; disputes as to the existence of a qualifying injury; disputes as to priority of payment; disputes as to statutory interpretation, etc. Although the decision to file litigation with regard to such disputes should not be made without careful consideration, injured persons must take appropriate steps to protect their rights and benefits. If a court determines that the denial of PIP benefits was “unreasonable,” the court will order the insurance company to pay all or a portion of the victim’s attorney fees.

II. PRESERVE THE BODILY INJURY LIABILITY CLAIM

If a person sustains bodily injury in a motor vehicle accident caused by the fault (i.e., negligence) of another driver, the Michigan No-Fault Act permits the victim to pursue a liability claim. This liability claim (also called the tort claim or the negligence claim) permits the victim to recover compensation for two types of damages: *excess economic loss* and *noneconomic loss*. Damages for “*excess economic loss*” consist of those out of pocket losses that are not compensable by no-fault benefits, i.e., wage loss in excess of the monthly maximum or lasting beyond the three year wage loss benefit period and replacement service expenses in excess of \$20 per day or lasting beyond the three year benefit period. Damages for “*noneconomic loss*” consist of those losses that affect a person’s quality of life, such as pain and suffering; incapacity, disability and loss of function; diminished social pleasure and enjoyment; mental anguish and emotional distress, etc. However, under the Michigan no-fault law, an accident victim is only entitled to recover damages for noneconomic loss if the victim sustained a “*threshold injury*.” Under the statute, a threshold injury is any one of three things: (1) serious impairment of body function; (2) permanent serious disfigurement; or (3) death. The threshold element of “*serious impairment of body function*” was recently defined by a statutory amendment to require “*an objectively manifested impairment of an important body function that affects the injured person’s general ability to lead his or her normal life.*” The threshold element of “permanent serious disfigurement” is not defined in the statute. Whether an injury rises to the level of “serious impairment of body function” or “permanent serious disfigurement” is a matter that depends upon the facts and circumstances of each individual case. Obviously, the more serious the injury, the more likely that the injury “crosses the threshold.” The best way to determine whether a particular injury satisfies the threshold requirements of the Michigan act is to consult attorneys who specialize in auto no-fault cases. The Michigan statute further provides that noneconomic damages are not recoverable if the victim is more than 50% at fault, or if the victim was driving an uninsured vehicle at the time of the accident which was owned by the victim.

Even though a threshold injury is required in order to recover noneconomic damages under the Michigan No-Fault Act, a threshold injury is not required in order to recover damages for “excess economic loss.” Therefore, if a person sustains work loss in excess of the monthly no-fault work loss benefits or sustains a loss of income beyond the three year no-fault work loss benefit period, a liability claim can be pursued regardless of whether the injury constitutes a threshold injury.

In light of the fact that no-fault PIP benefits do not fully compensate auto accident victims for all of the damages they sustain, the liability claim is oftentimes the only way a victim can be “made whole.” Therefore, if a person sustains a serious injury in a motor vehicle accident caused by the fault of another driver, the injured person should seriously consider pursuing a liability claim for excess economic loss and noneconomic loss.

Many accident victims seriously weaken their liability claim by not moving quickly to protect it. This is unfortunate because it is a virtual certainty that the insurance company of the party at fault will indeed move quickly to conduct a thorough investigation for purposes of *building a case against the injured victim*. Therefore, the injured victim must counter that effort by taking appropriate steps in a timely fashion. In this regard, the injured victim should do the following:

A. *Initiate a thorough investigation*

The victim should arrange to have his or her legal representative investigate the accident as soon thereafter as possible. Such an investigation should include interviewing all witnesses, photographing the scene, photographing all vehicles involved in the accident (both inside and outside), taking measurements at the scene, collecting physical evidence at the scene, interviewing police officers, etc. The victim can do this by either hiring a competent private investigator or by retaining a lawyer or law firm who specializes in personal injury work.

B. Photograph injuries and document course of treatment

Where a victim has sustained significant visible injury, such as lacerations, burns, surgical scarring or other disfigurement, those visible injuries should be thoroughly photographed as soon as possible with excellent camera equipment. In addition, photographs or videos should be taken of certain kinds of medical treatment (i.e., physical therapy, burn treatment, etc.). If photographic equipment is not available to the victim's family, then arrangements should be made for a professional photographer to take these photographs.

C. Do not speak with any investigators or adjusters representing the interests of the party at fault

As previously indicated, the insurance company for the party at fault will be conducting an investigation soon after the accident. One of the first things that is typically done in connection with such an investigation is to contact the victim and ask the victim to give a statement, either in writing or by tape recorder. The victim should absolutely refuse to do this unless he or she has first consulted with an attorney specializing in personal injury law regarding the advisability of such an interview. In this regard, it is important to remember what the police tell suspects in criminal cases prior to taking statements: *"What you say can and will be used against you!"*

D. Do not sign any medical authorizations, except those requested by your own no-fault insurance company

Oftentimes, the injured person will be asked by an insurance adjuster for the party at fault to provide a signed medical authorization release form enabling the adjuster to obtain all of the victim's medical records and speak with the victim's physicians. The victim should absolutely refuse to sign such an authorization until the victim has first talked with an attorney specializing in personal injury law to discuss the situation.

E. Do not enter into premature settlement negotiations without proper legal advice

Many times the insurance company representing the party at fault will approach a seriously injured victim and offer to make a settlement of the bodily injury tort claim in exchange for the victim signing a full release of liability. It is absolutely foolhardy to consider entering into such settlement negotiations with an insurance company unless all of the following facts have been established: (1) the victim is reasonably certain that he or she is fully recovered from all accident related injuries; (2) the victim has fully investigated the accident and knows the identities of any and all potential defendants and insurance companies who may have liability; (3) the release is only a release of the liability claim and not a release of any other rights the victim may have; (4) the victim has completely researched whether such a settlement would jeopardized other claims the victim may have against other parties or against

the victims own insurance company for additional benefits, such as underinsured motorist benefits; and (5) the victim has obtained competent legal advice from a personal injury specialist regarding the wisdom of entering into such a settlement. Remember, once a release is signed, the victim can never “undo the deal.”

III. CONCLUSION

The passage of the Michigan No-Fault Automobile Insurance Act has spawned the creation of a whole new body of complex law. Michigan citizens have very substantial rights under the Michigan statute. ***However, it is only when people have a complete understanding of their legal rights under the no-fault law, that they will be assured of receiving all benefits and recovering all damages to which they are legally entitled.*** In cases of serious bodily injury, it is always advisable to talk to experienced attorneys who fully understand the Michigan no-fault system and who regularly handle no-fault automobile accident cases. Victims who deal directly with insurance companies without the benefit of competent legal advice, often are short changed. ***This is one area where ignorance can be very costly!***