

MCR 2.403
Case Evaluation

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 16, 2005

MCR 2.403 (M)(3) should be amended as proposed by the Civil Procedure and Courts Committee.

- (a) yes
- (b) no

Synopsis

The Civil Procedure and Courts Committee recommends that the current case evaluation court rule be amended to limit its scope regarding automobile no fault benefit cases, to limit its scope to only expenses actually incurred and disputed before the case evaluation hearing due to the ongoing nature of these types of claims. The current rule provides that acceptance of a case evaluation award is deemed to dispose of all claims in an action.

Proposed MCR Amendment

MCR 2.403 (Case Evaluation)

(A)-(L) [Unchanged]

(M)(1)-(2) [Unchanged]

(3) In a case alleging a claim for personal protection insurance benefits under MCL 500.3101, et seq, the award is limited to expenses claimed in the action that were incurred and disputed prior to the case evaluation hearing. The trial court may enter an order further limiting the scope of case evaluation. A judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.

(N)-(O) [Unchanged]

Additional Commentary

MCR 2.403(M)(1) provides in pertinent part that a judgment or dismissal entered upon mutual acceptance of a case evaluation award shall be deemed to dispose of all claims in the action.” This rule has been strictly enforced. See, e.g., Marshall v Franklin Life Ins Co, 2001 WL 733529 (February 20, 2001).

The Civil Procedure and Courts Committee notes that as a result, the current case evaluation rule raises problems in actions for personal protection benefits (commonly known as auto no-fault benefits) under MCL 500.310, et seq. Such cases typically involve claims for a combination of no-fault expenses, some incurred pre-suit, with other expenses incurred throughout the pendency of the lawsuit, as well as claims for declaratory relief for future benefits.

The ongoing nature of these claims and the claims for declaratory relief present specific problems in view of the current rule that requires that all claims within a cause of action be disposed of by the process.

The Committee opines that the most troublesome aspect of the current rule arises in claims for declaratory relief for future benefits because it is unwise for a plaintiff to accept case evaluation when declaratory relief sought, thereby risking the dismissal of the plaintiff’s entire claim and a loss of future benefits.

The Committee states that problems also arise in cases involving ongoing disputes where medical expenses are being incurred at or shortly after the time of the case evaluation hearing. The Committee notes that the time lag between the date of case evaluation hearing and entry of judgment is minimally 29 days and in actual practice much longer, often several months. Expenses incurred during this time cannot be determined in advance, yet would be covered by a judgment on mutual acceptance of an award.

The Committee believes that the proposed new MCR 2.403(M)(3) solves these problems by limiting case evaluation awards in PIP actions to expenses incurred and disputed before the case evaluation hearing, and providing that “[a] judgment or dismissal based on mutual acceptance of the award does not dispose of any claims in the action that seek declaratory relief for future benefits, or for reimbursement of expenses that were incurred and disputed after the case evaluation hearing.” The Committee believes that the new rule also provides the trial court with the ability to further limit the scope of case evaluation where needed.

The Civil Procedure and Courts Committee urges the Representative Assembly to approve the amendment to MCR 2.403(M)(3) and transmit it to the Michigan Supreme Court with a recommendation that the Court adopt the amendment.