

6. The Plan is provided to all enrollees, and the plan documents containing these provisions are expressly made a part of Humana's contract with the Federal government.
7. At all relevant times, Plaintiff Jenise Morris was a member of the FEHBA benefit plan administered by Humana.
8. On or around March 8, 2010, Plaintiff was injured in a motor vehicle accident.
9. Plaintiff received treatment for her injuries sustained in the accident from numerous healthcare providers.
10. Plaintiff's medical bills related to the auto accident were paid by Defendant.
11. Plaintiff asserted a personal injury claim against the driver Matthew Kelly for her injuries sustained in accident and submitted a demand to Mr. Kelly's insurance carrier, Progressive Insurance.
12. Plaintiff subsequently settled that claim with Progressive Insurance.
13. Defendant asserted a lien against Plaintiff's recovery in the amount of \$3,432.45 for healthcare benefits and services provided to Ms. Morris in treatment of her accident related injuries.
14. Defendant was paid its lien directly by Progressive Insurance.

Discussion

Throughout this action, the Defendant has hotly contended that FEHBA preempts Missouri's law against subrogation. For numerous reasons, this Court has disagreed with the Defendant concerning this issue.¹ The Court believed that the Federal courts, as the final arbiters on federal laws, had indicated that the preemption provision of FEHBA did not extend to any state's law on subrogation and reimbursement.

On December 26, 2012, however, the Eastern District of the Missouri Court of Appeals executed an order concerning this fiercely contested issue. In *Nevils v. Group Health Plan*, No. ED98538, 2012 Mo. App. LEXIS 1628 (Mo. Ct. App. December 26, 2012), the Eastern District of the Missouri Court of appeals affirmed the trial court's decision to grant summary judgment to the defendant. *Nevils*, 2012 Mo. App. LEXIS at *15. In the opinion, the court of appeals determined that a prior Missouri Court of Appeals case finding that FEHBA preempts Missouri's law against subrogation is still the law in Missouri. *Nevils*, 2012 Mo. App. LEXIS at *13.

¹ See the order of this Court filed on April 4, 2012.


Therefore, consistent with the decision in *Nevils*, the Court will GRANT the Defendant's motion. The Court finds that, consistent with the appellate court's decision in *Nevils*, Defendant is entitled to summary judgment because the Plaintiff's claims are preempted by FEHBA.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Summary Judgment is **GRANTED**.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment is **MOOT** in light of the Court's ruling on the Defendant's motion.


IT IS SO ORDERED.

3-13-13
Date


The Honorable Ann Mesle
Circuit Court Judge

I certify that copies were faxed on
13 day of March, 2013 to:

- Douglas Weems, (816) 474-3216
- Mitchell Burgess, (816) 471-1701
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Jamie Maggard, Law Clerk, Division 7