

NO. 24429

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE MATTER OF THE CLAIM OF CHRISTOPHER IAEA,
Claimant-Appellant, v. TIG INSURANCE COMPANY and WAYNE
C. METCALF, III, INSURANCE COMMISSIONER, DEPARTMENT OF
COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAI'I,
Respondents-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-1-2655)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim, and Foley, JJ.)

Claimant-Appellant Christopher Iaea (Iaea) appeals from
(1) the Decision and Order Affirming Commissioner's Final Order
and (2) the Judgment, both entered on June 26, 2001 by the
Circuit Court of the First Circuit (the circuit court),
Judge Eden Elizabeth Hifo presiding, affirming a decision of
Respondent-Appellee Wayne C. Metcalf, III, Insurance
Commissioner, Department of Commerce and Consumer Affairs, State
of Hawai'i that, in turn, upheld the denial by
Respondent-Appellee TIG Insurance Company (TIG) of no-fault motor
vehicle insurance benefits to Iaea.

The primary argument raised by Iaea on appeal is that the circuit court incorrectly concluded that he had the burden of proving, by a preponderance of the evidence, that TIG's denial of benefits to him that allegedly arose out of a May 18, 1997 motor vehicle accident was improper. In light of our decision in In re Hoffacker v. State Farm Mutual Auto Ins. Co., slip op. (App. No. 24293, Dec. 17, 2002), which presented the identical issue, we reject Iaea's argument.

In addition, Iaea contends that TIG's prior payment of various medical bills received by Iaea constituted an admission of liability by TIG. Our review of the record on appeal indicates no dispute that Iaea temporarily aggravated his pre-existing injuries when he was involved in the motor vehicle accident on May 18, 1997. Although TIG initially paid for Iaea's treatment expenses, it requested an independent medical examination (IME) and peer review after Iaea's treating physician submitted a treatment plan on September 5, 1997 that would have required Iaea to undergo twelve sessions of physical therapy. Based on the IME and peer review report, TIG challenged and ultimately denied benefits for this treatment plan.

The circuit court determined that no showing had been made "that payments that TIG may have made were inconsistent with

its denial of Iaea's contested claim." Based on our review of the record, we cannot conclude that the circuit court's determination was clearly erroneous.

Affirmed.

DATED: Honolulu, Hawai'i, December 31, 2002.

On the briefs:

Christopher R. Evans
for claimant-appellant.

Katharine M. Nohr (Miyagi,
Nohr & Myhre) for respondent-
appellee TIG Insurance Company.

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