IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PENNY SNYDER, Plaintiff	:	No. 19-1720
	:	Civil Action – Law
vs.	:	
	:	*Motion in Limine*
EMANUEL FINNERTY, Defendant	:	

OPINION AND ORDER

AND NOW, after argument held on December 21, 2021 on Plaintiff's Motion *in Limine*, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiff Penny Snyder ("Plaintiff") commenced this action by filing a Writ of Summons on October 9, 2019; Plaintiff filed a Complaint on June 11, 2020. The Complaint alleges that, on October 17, 2017, the vehicle Plaintiff was operating was struck from behind by a vehicle operated by Defendant Emanuel Finnerty ("Defendant"). The Complaint contains a single count of negligence against Defendant. This case is scheduled for a jury trial on February 2 and 3, 2022.

MOTION IN LIMINE

On December 10, 2021, Plaintiff timely filed a Motion *in Limine* seeking "to preclude Defendant from introducing evidence of her receipt of social security disability benefits."[1] In support of her motion, Plaintiff cited the collateral source rule and its general prohibition on "[t]he introduction of evidence during trial of a plaintiff's receipt of social security disability benefits in a personal injury action…."[2]

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[1] Hereafter, "SSDI."

[2] Plaintiff's Motion *in Limine*, ¶2 and ¶3 (citing *Johnson v. Beane*, 664 A.2d 96 (Pa. 1995) and *Nigra v. Walsh*, 797 A.2d 353 (Pa. Super. 2002)).

At argument, Defendant indicated that he did not intend to introduce evidence of the value of Plaintiff's disability payments or any other collateral source of funds in an attempt to diminish the value of any verdict Plaintiff might receive. He indicated his belief, however, that Plaintiff may attempt to suggest at trial that she became disabled as a result of the October 17, 2017 motor vehicle collision, when discovery shows that she had claimed to be totally disabled prior to that date.[3] As such, Defendant fears that, if he is unable to question Plaintiff as to whether she was disabled prior to the accident, the jury's award might not reflect that Plaintiff's baseline state was other than fully-abled.

Specifically, Defendant intends to ask Plaintiff, on cross-examination, something to the effect of "were you disabled prior to October 17, 2017?" Defendant indicates if Plaintiff admits she was disabled prior to the collision, he would have no need to bring up SSDI or inquire further into this area. Defendant suggests, however, that should Plaintiff state she was not disabled prior to the collision, he should be permitted to confront her with her claim, made in an official application for SSDI, that she was disabled beginning in September 2016. Essentially, Defendant argues that it would be profoundly unfair for Plaintiff to represent to the government that she became disabled in 2016, but to suggest to the jury that she became disabled as a result of the October 17, 2017 collision.

[3] During the December 21, 2021 argument, the parties disputed when Plaintiff first made a disability claim and when she claimed to have become disabled. The Court directed the parties to review discovery, discuss the facts and law, attempt to come to a consensus, and advise the Court of the same. Plaintiff indicated at argument that she applied for SSDI after October 17, 2017; Defendant pointed out that she alleged her disability began in September of 2016. The Court has not been provided with any information contrary to these two averments.

Plaintiff acknowledges that Defendant should be able to cross-examine her on her medical condition prior to the accident, but vehemently objects to Defendant's invocation of SSDI generally or qualification for SSDI payments particularly. Essentially, Plaintiff argues that Defendant can accomplish everything he would need to at cross-examination without bringing up the topic of SSDI or the concept of "disability." Plaintiff believes such references are especially unwarranted in light of the fact that Plaintiff is not seeking a wage loss claim.

ANALYSIS

Pennsylvania has long recognized that a tortfeasor should not be permitted to avoid responsibility by "taking advantage of the fortuitous existence of a collateral remedy."[4] Thus, like many states, Pennsylvania has adopted the "collateral source rule," which "prohibits a defendant in a personal injury action from introducing evidence of the plaintiff's receipt of benefits from a collateral source for the same injuries which are alleged to have been caused by the defendant."[5] Questioning or the introduction of evidence by a defendant which is intended to inform the jury that the plaintiff is receiving compensation from a collateral source is generally inadmissible.[6] The collateral source rule does not bar a plaintiff from introducing such evidence,[7] but doing so will open the door to defense questioning on that topic.[8]

Defendants have been permitted to introduce limited evidence about the plaintiff's recovery from collateral sources when "evidence of such recovery is

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[4] *Beechwoods Flying Service, Inc. v. Al Hamilton Contracting Corp.*, 476 A.2d 350, 353 (Pa. 1984); *see McLaughlin v. City of Cory*, 77 Pa. 109 (Pa. 1875).
[5] *Collins v. Cement Exp., Inc.*, 447 A.2d 987, 988 (Pa. Super. 1982).
[6] *See Nigra v. Walsh*, 797 A.2d 353, 358 (Pa. Super. 2002).
[7] *Simmons v. Cobb*, 906 A.2d 582, 585 (Pa. Super. 2006).
[8] *Collins*, 447 A.2d at 988.

relevant to a material issue in the case."[9] This, however, is the exception; Pennsylvania Courts have emphatically explained that references to collateral sources will usually constitute reversible error, even when the jury rules in favor of the defendant on liability and does not reach the damages stage.[10] Indeed, both the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania have suggested at least once that a particular defendant's proffered permissible purpose for introducing collateral source evidence was pretextual.[11]

Here, the Court does not believe that Defendant intends to introduce evidence of Plaintiff's SSDI payments for any improper purpose. The Court readily accepts as genuine, and not pretextual, Defendant's wish to compare Plaintiff's medical condition before and after October 17, 2017, which is highly relevant to Plaintiff's damages. This is especially true in light of the fact that Plaintiff is not making a lost wage claim and Defendant is seeking to suggest that Plaintiff's SSDI payments are at least in part for conditions *pre-existing* the collision, rather than caused by it. The great difficulty inherent in Defendant's position, however, is that by introducing evidence that Plaintiff claimed she was disabled as of September 2016 *in a filing*

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[9] *Gallagher v. Pennsylvania Liquor Control Bd.*, 883 A.2d 550, 557 (Pa. 2005). In *Gallagher*, multiple defendants asserted they were the plaintiff's employer and thus immune from liability under the Workers' Compensation Act. Over the plaintiff's objection, the trial court permitted the defendants to "mention workers' compensation only to show that premiums were paid on behalf of [the] plaintiff." *Id*. at 551. The Supreme Court of Pennsylvania endorsed the trial court's ruling (even though it was subsequently violated by counsel), citing the exception to the collateral source rule for evidence relevant to a material issue in the case. *Id*. at 557-58.

[10] *See, e.g., Nigra*, 797 A.2d at 361 (indicating that it is impossible to disentangle the violation of the collateral source rule from the jury's liability determination).

[11] In *Lengle v. North Lebanon Township*, the Supreme Court of Pennsylvania held, even though evidence that the decedent's children had received compensation "[was] offer[ed]… for the purpose of showing plaintiff could not maintain the action in the right of the children… [t]he real purpose… was to convey to the jury the fact that the children were already being taken care of…." *Lengle v. North Lebanon Tp.*, 117 A. 403 (Pa. 1922). *See also Nigra v. Walsh*, 797 A.2d 353 (Pa. Super. 2002), discussed *infra*.

made after the collision, and that this contention was credited in the award of SSDI, the jury will necessarily hear evidence that Plaintiff is currently receiving SSDI benefits.

Two cases are particularly helpful in addressing this difficulty. The first is *Lobalzo v. Varoli*.[12] In *Lobalzo*, the defendant made multiple statements to the jury indicating that the plaintiff had received worker's compensation from an insurance company.[13] The Supreme Court of Pennsylvania granted the plaintiff a new trial, stating:

> The defendants argue, and the lower Court accepted as meritorious the argument, that they were merely seeking to show that the plaintiff had made a statement to the insurance company carrier which was inconsistent with his court testimony. But this alleged inconsistency could have been shown without erecting in the path of a just decision the fact of payments of workmen's compensation which, presented as it was here, could not help but represent the plaintiff as seeking to be paid twice for one loss.

Similarly, in *Nigra v. Walsh*, the defendant's "proffered reason for the inquiry about social security was to point out the inconsistency between the statements made by [the plaintiff] in the social security application and [the plaintiff's] position and statements at trial."[14] Noting that the defense counsel's "questions and comments did not always focus on the alleged inconsistencies, but sometimes

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[12] *Lobalzo v. Varoli,* 185 A.2d 557 (Pa. 1962).
[13] *Id*. at 559.
[14] *Nigra*, 797 A.2d at 358.

focused on the fact that [the plaintiff] was receiving social security benefits," the Superior Court found a clear violation of the collateral source rule and granted the plaintiff a new trial.[15]

When taken in its entirety, Pennsylvania case law allows the introduction of evidence of payments from a collateral source in only a small sliver of cases. The Court is constrained to hold that this is not such a case, for two reasons.

First, evidence that ostensibly violates the collateral source rule may only be admitted when it "is relevant to a material issue in the case." Defendant wishes to introduce evidence that Plaintiff claimed her disability began in September of 2016, and that this claim was credited by the approval of her SSDI application. Whether and when Plaintiff became disabled and entitled to SSDI, however, is not directly relevant to the question of damages. Rather, Plaintiff is entitled to attempt to establish that various injuries, ailments, and losses of ability were caused by the October 17, 2017 collision, and Defendant is entitled to establish – through evidence, testimony, and cross-examination – that certain of those injuries, ailments, and losses of ability predated the collision. In the abstract, whether Plaintiff was "disabled" conveys nothing about her capabilities and harms either before or after the collision. Plaintiff's entitlement to SSDI due to an adjudication of "disability" might be

[15] *Id*. In particular, the Superior Court opinion reproduced lengthy portions of cross-examination characterized by such questions as "okay, you're still on social security, are you not?"; "did you make an application to the government claiming that you were disabled, beginning in January, 1998, for badness in your back and heart disease?"; "did you write a letter [to the government]… that suggest[s] that you have heart disease?"; and "what's contained in [your SSDI application papers] is true, is it not?" The Court held that this cross-examination, when considered with cross-examination of other witnesses, violated the collateral source rule.

helpful to the jury as something of a shortcut, but would not convey any specific information about exactly what harms she suffered.

Second, Defendant has many ways to conduct his defense without making reference to Plaintiff's SSDI benefits or disability status. Presumably, Plaintiff will present evidence of specific injuries she claims were caused by the October 17, 2017 collision. The parties have access to Plaintiff's medical records, and both parties represented at argument that they intend to call medical experts to discuss Plaintiff's medical history, specifically which of Plaintiff's conditions were pre-existing and which were caused by the collision. Further, Defendant will be able to ask Plaintiff questions on cross-examination about specific injuries and disabilities she claimed to have begun prior to the collision without disclosing to the jury the existence of the SSDI application or Plaintiff's disability status.[16] In short, although adherence to the collateral source rule may require Defendant to deviate from his preferred defense strategy, it will not prevent Defendant from presenting a defense at all.

Ultimately, the law in Pennsylvania is emphatic that references to collateral sources, such as SSDI, by a defendant are extremely prejudicial to plaintiffs, and thus are allowed only in extremely narrow circumstances. Although Defendant's reasons for wishing to explore Plaintiff's disability are not *per se* improper, benign motivations are not sufficient to override the collateral source rule unless the defense would be severely handicapped by its operation. Therefore, Defendant shall not be permitted to introduce evidence or cross-examine Plaintiff concerning her SSDI

[16] Of course, if Plaintiff testifies inconsistently with her application, she runs the dual risks of being impeached by her previous statements and opening the door to the introduction of her SSDI status.

payments or application. Further, references by Defendant to Plaintiff's disability status, or whether or when she believed herself "disabled," are highly likely to steer the evidence or testimony in an inappropriate direction. Because Defendant can fully cross-examine Plaintiff about her medical condition, abilities, and injuries both before and after the collision without using the term "disability" or asking whether and when she considered herself "disabled," Defendant shall be precluded from using these terms as well.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion *in Limine* is hereby GRANTED. Defendant may question Plaintiff about the scope and extent of her injuries both prior to and following the October 17, 2017 automobile collision, but shall be precluded from using the term "disability" or otherwise referencing Plaintiff's SSDI application, payments, or disability status.

IT IS SO ORDERED this 10th day of January 2022.

By the Court,

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Eric R. Linhardt, Judge

ERL/jcr
cc: Amy Boring, Esq.
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