

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

AND PLAINTIFFS

VS.

NO.

DEFENDANT

REBUTTAL IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

1. The Plaintiffs' Response to Motion does not contest any of the undisputed facts set forth in Motion. Accordingly, the issue of whether could be subject to punitive damages, that is, (1) whether did not have a legitimate or arguable basis for denying the claim and (2) whether acted with malice, oppression or in reckless disregard for the Plaintiffs' rights is properly before this Court. Davidson v. State Farm Fire & Cas. Co., 641 F. Supp. 503, 506, 510 (N.D. Miss. 1986) (punitive damage issue in refusal to pay claim appropriate for summary judgment).

2. attending physician presents an Affidavit presumably in support of his/her Response. However, the Affidavit does nothing more than address undisputed facts. Dr. does not dispute that the admission into was not medically necessary. He/She simply states he/she was admitted for a particular reason. This is not contested. Even if had claimed that the treatment was medically necessary, reliance on other physicians' opinions that the hospitalization was not medically necessary was a legitimate or arguable reason for denial.

3. further states that approved admission after it was called for pre-certification. However, Dr. does not represent to this Court that the certification granted was for the entire stay. admits it was called for pre-certification -- it was called on occasions concerning the first days of admission. Certification was given, but for only day. See Affidavit of attached as Ex. to the Motion and Affidavit of , attached as Ex. . to this Rebuttal. is the Hospital representative who actually spoke with Nurse . He/She testifies that certification was granted only for

To the extent the Plaintiff intended the Doctor's ambiguous statement to dispute whether certification was granted for the entire stay, the Affidavit is deficient and cannot be used for that purpose. Specific facts must be offered to oppose a motion for summary judgment rather than general statements. Fruchter v. Lynch Co., 522 So. 2d 195, 199 (Miss. 1988); Jenkins v Forrest Co General Hos., 542 So. 2d 1180, 1185 (Miss. 1988) (physician's affidavit that failed to set forth specific facts to support general statement was insufficient to defend against summary judgment motion).

4. No genuine issue as to any material facts exists. Accordingly, the issue as to whether had a legitimate or arguable basis for refusing to pay for hospital expenses that were found not to be medically necessary, which is not disputed, is a matter for this Court to decide on summary judgment.

