

AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.
ALLSTATE INSURANCE CO.
(Respondent)

AAA CASE NO.: 18 Z 600 13096 03
INS. CO. CLAIMS NO.: 1873749251
DRP NAME: Barry K. Odell
NATURE OF DISPUTE: Causation,
Reasonable and Necessary

AWARD OF DISPUTE RESOLUTION PROFESSIONAL

I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP), designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey "Automobile Insurance Cost Reduction Act" as governed by *N.J.S.A. 39:6A-5, et seq.*, and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is **DETERMINED** as follows:

Injured Person(s) hereinafter referred to as: D.A.R.

1. ORAL HEARING held on January 5, 2004.
2. NO ONE APPEARED at the oral hearing(s) for Respondent.

Claimant appeared telephonically.

3. Claims in the Demand for Arbitration were NOT AMENDED at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The within matter arises from an automobile accident which occurred on March 10, 2001. Based upon the date of the accident and the lack of any contrary evidence being presented, I find that the provisions of AICRA apply to the within claim.

Remaining in issue in this matter are the bills of two providers, Dr. John Hamada, D.C. in the amount of \$2,112.96 and MRI Center at Lawrenceville in the amount of \$1,040.00. The bill of Dr. Hamada is for chiropractic care. The bill of MRI Center at Lawrenceville is for an MRI of the lumbar spine performed on December 17, 2001.

Medical records of all treating providers have been provided. Claimant suffered a disc bulge at L3-4 and L5-S1, a right S1 radiculopathy and a diagnosed spondylolisthesis, Grade I at L4-5. A diagnosis of an exacerbation of a pre-existing spondylolisthesis at L3 to L5 was also made.

Records reveal that the patient, D.A.R., had fallen and sustained a prior injury in December of 2000. The history presented in the report of Dr. James P. Taitsman, M.D. indicated that she had some minor back pain which had resolved and she had x-rays taken in January of 2001. Dr. Eingorn, an orthopedist, indicates in his report that the x-rays taken in January of 2001, before the accident giving rise to this accident, showed no evidence of any spondylolisthesis. The Grade I spondylolisthesis at L4-5 was indicated in the March 31, 2001 x-ray and was consistent in Dr. Eingorn's opinion, with both spondylolisthesis Grade I and spinal stenosis, as indicated by the MRI report.

The within matter was filed by Demand received July 15, 2003. Notice of same was served upon the Respondent. Correspondence from the American Arbitration Association dated September 15, 2003 provided confirmation of receipt of the within matter to Respondent and notice of the hearing date. The American Arbitration Association and the Arbitrator contacted the Respondent prior to the close of hearing. No appearance was entered in this matter by the Respondent. Pursuant to the requirements of Rule 20, an attempt was made to contact the Respondent at time of hearing. The hearing was then closed in accordance with Rule 23.

Noting the uncontested evidence presented, consisting of Dr. Hamada's records and reports, the reports of Taitsman and Dr. Eingorn, and the findings of the MRI report, I find that all bills claimed were medically necessary as defined by N.J.A.C. 11:3-4.2. I therefore award the full amounts claimed, subject to reduction as required by the application of the New Jersey Medical Fee Schedule and any applicable remaining policy co-payment and/or deductible.

As no argument or computation with regard to the issue of interest on the awarded amount has been presented, I find this portion of the claim to have been waived.

Counsel for Claimant has submitted a demand for counsel fees and reimbursement of costs. Based upon a review of the file, I note that Claimant did submit a comprehensive Arbitration Statement, prepare a Demand and appear telephonically at oral hearing. Based upon a review of the file, I find that a counsel fee in the amount of \$750.00 would be consonant with both the amount of the award and with Rule 1.5 of the Supreme Court Rules of Professional Conduct. See, Enright v. Lubow, 215 N.J. Super. 306 (App. Div.) cert. den. 108 N.J. 193 (1987). I also award reimbursement of costs in the amount of \$285.00 representing reimbursement of the filing fee only.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded*	Payable to
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John Hamada, D.C.	\$2,112.96	\$2,112.96	Provider
MRI Center at Lawrenceville	\$1,040.00	\$1,040.00	Provider

Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

*Amounts awarded are subject to reduction as required by the application of the New Jersey Medical Fee Schedule and any applicable remaining policy co-payment and/or deductible.

6. INCOME CONTINUATION BENEFITS: Not In Issue

7. ESSENTIAL SERVICES BENEFITS: Not In Issue

8. DEATH BENEFITS: Not In Issue

9. FUNERAL EXPENSE BENEFITS: Not In Issue

10. I find that the CLAIMANT did prevail, and I award the following COSTS/ATTORNEYS FEES under N.J.S.A. 39:6A-5.2 and INTEREST under N.J.S.A. 39:6A-5h.

(A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$285.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$750.00

(C) INTEREST is as follows: waived per the Claimant.

This Award is in **FULL SATISFACTION** of all Claims submitted to this arbitration.

January 6, 2004

Date

Barry K. Odell, Esq.