

**AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS**

In the Matter of the Arbitration between

(Claimant)

v.
Liberty Mutual INsurance
(Respondent)

AAA CASE NO.: 18 Z 600 14739 02
INS. CO. CLAIMS NO.: 001882661-0002
DRP NAME: Sergio G. Carro
NATURE OF DISPUTE: Pre-
Certification, 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: IN and NO.

1. ORAL HEARING held on July 8, 2003.
2. ALL PARTIES APPEARED at the oral hearing(s) .

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration were AMENDED and permitted by the DRP at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

The original demand was amended to the total sum of \$4,674.99.

The Respondent stipulated that it will pay the bills regarding NO in the amount of \$2,040.00 subject to fee schedule, co-pay and deductible.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

This controversy flows from a motor vehicle accident that occurred 10/29/01. Both IN and NO were injured in that accident and in an effort to cure themselves of their injuries sought treatment from the Claimant. As noted above, the Respondent has stipulated that it will make payment on the bills regarding NO. Thus, the bills left in contention involve only IN.

In determining this demand, I have reviewed and considered the following document submissions together with the oral arguments of counsel presented at hearing:

- 1.) Claimant's Demand for Arbitration filed 8/26/02;
- 2.) Claimant's Amended Demand for Arbitration dated 5/22/03;
- 3.) Claimant's Arbitration Statement dated 6/10/03;
- 4.) Respondent's Arbitration Statement dated 7/8/03; and
- 5.) Claimant's post hearing submission dated 7/14/03.

The bills to be decided in this case all involve IN and can be dealt with in two issues or blocks of treatment.

First, Claimant seeks \$924.99 for precertification failure penalties taken by Respondent for dates of service 12/31/01 through 2/13/02. Claimant submits precertification requests covering this time period so Respondent's penalty is disallowed and Claimant is awarded \$924.99.

The second issue involves an office visit on 3/27/02 for which Claimant seeks \$115.00 and treatment from 4/15/02 through 7/10/02 for which Claimant seeks \$1,595.00. Respondent has denied all these bills on the defense of medical necessity. In that regard, Respondent relies on the MD review report of Holley Heyert, DC dated 3/21/02 which indicates that treatment exceeded care paths 1/6 and was not medically necessary or reasonable. More specifically, Dr. Heyert found that the frequency of the chiropractic treatment rendered was appropriate because a frequent rate of treatment is necessary to maximize therapeutic benefit. However, she found that the treatment for dates of service in issue not medically reasonable or because significant therapeutic benefit had not been established and "without documentation of therapeutic gain, medical necessity for continuing the length of conservative treatment is not established."

Claimant counters that Dr. Heyert never physically examined the patient. Moreover, Claimant submits the narrative report of Dr. Leyble, the treating chiropractor and Claimant herein, as well as MRI reports and neurological report of Dr. Kolla which corroborate Claimant's diagnosis and recommendation of continued treatment. Specifically, MRI testing revealed disc bulges at L5-S1 and C6-7. EMG testing was normal for the lower extremities but was consistent with left C7 root irritation. I am satisfied that the records and reports provided in this matter sufficiently establish that a pattern of improvement is demonstrated. As Dr. Heyert's opinion of lack of medical necessity is based upon a lack of significant improvement, and as the records clearly demonstrate a marked improvement in range of motion over the course of treatment, I find that the treatment at issue was medically reasonable and necessary and is supported by the weight of credible medical evidence in this matter. Accordingly, I find in favor of Claimant on this issue.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Dr. Andrew Leyble	\$4,674.99	\$4,674.99	Dr. Andrew Leyble

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

The award is subject to deductible, co-pay and fee schedule.

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): \$325.00.

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,250.00.

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

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

September 8, 2003

Date

Sergio G. Carro, Esq.