

**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 16199 03
INS. CO. CLAIMS NO.: 1873937864
DRP NAME: Kate Rabassa Wallen
NATURE OF DISPUTE: Diagnostic Test,
Fee Schedule, Pre-Certification

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: Insured.

1. ORAL HEARING held on 2/11/04.
2. ALL PARTIES APPEARED at the oral hearing(s) .

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration were 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).

Washington Medical - \$844.00

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The insured was involved in a motor vehicle accident on 2/17/02. The issues in the case involve EMG testing performed on 7/10/02, a physical therapy re-evaluation on 8/9/02 and two office visits on 9/6/02 and 10/9/02.

Respondent relies upon a physician advisor determination on 7/31/02, 8/9/02. Claimant has submitted an affidavit of Dr. Domenic Laganella dated 1/19/04 together with progress notes dated 11/5/03, 8/8/03, 5/21/03, 3/21/03, 11/29/02, 10/9/02, 9/6/02, 7/31/02, 6/10/02, 5/17/02, 4/19/02, 3/22/02, 3/8/02 and report dated 2/27/02. Also

included in documents are an operative report of 6/19/03 for a cervical laminectomy and fusion, MRI of the lumbar spine dated 6/14/02, MRI of the cervical spine dated 5/16/02, EMG report dated 7/10/02, and xrays from Atlantic City Medical Center dated 2/18/02 showing non-displaced fracture of the right fifth through eighth ribs.

Initially, Respondent denied certification for the EMG indicating that results of the MRI should be obtained first. Thereafter, on 7/31/02, Respondent's physician advisor determination certified the EMG to investigate persistent signs of radiculopathy and the left arm and leg. Therefore, I award the charges on 7/10/02. I further find that the two office visits of 9/6/02 and 10/9/02 were medically necessary while the insured was waiting authorization for the surgery ultimately performed by Dr. Kazmi. However, I insufficient evidence to support the physical therapy re-evaluation on 8/9/02, as claimant had a course of physical therapy and the physician advisor indicated that there was a failure to improve with five months of physical therapy.

With respect to attorney fees, I have reviewed Claimant's attorney fee certification and considered Respondent's comments thereon. I find that an attorney fee of \$1,100.00 is consonant with the award and with RPC 1.5 and takes into account the actual length of the arbitration hearing. The filing fee of \$285.00 and certified mail cost for service of the demand in the amount of \$4.42 are awarded for total costs of \$289.42. Interest is deemed waived by Claimant as no calculations on fee scheduled amounts were provided.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Washington Medical	\$844.00	\$739.00	Provider

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

Amount awarded is subject to reduction based on application of the medical fee schedule by Respondent.

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): \$289.42 (\$285.00 + \$4.42)

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,100.00

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

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

2/18/04
Date

Kate Rabassa Wallen, Esq.