

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

In the Matter of the Arbitration between

(Claimant)

v.

PRUDENTIAL INSURANCE COM.
(Respondent)

AAA CASE NO.: 18 Z 600 16438 02

INS. CO. CLAIMS NO.:

35V01194E07072

DRP NAME: Michael F. Carnevale II

NATURE OF DISPUTE: Medical
Necessity

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: DS.

1. ORAL HEARING held on April 2, 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 not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

Claim for Dr. Gellasch amended to \$3,438.00, and claim for Capitol Open MRI was permitted.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

Claimant DS was injured in an automobile accident on January 29, 2001 while insured by respondent. The issue in this AICRA case is the medical necessity of certain treatment, including chiropractic treatment and electrodiagnostic testing.

In considering this matter I have reviewed the submissions of the parties, including the following: Records and reports of Eric Gellasch, DC, Phillip Grossman, DC, Barry Fass,

MD, test results, treatment notes and bill summaries and bills submitted by claimant; and the reports of Mark Dudick, DC, and Jay Bowen, DO, submitted by respondent.

I also had the benefit of the testimony of Dr. Gellasch, who I find to be credible and consistent in his testimony concerning this matter.

DS sustained neck and back injuries at the time of the accident, and was diagnosed with cervical and lumbar sprain and strain, myofascial pain syndrome with C6-7 radiculopathy per EMG and foraminal encroachment at L4 through S1.

DS also complains of pain, discomfort and limitation of movement which affects activities of her daily life. Complaints of lumbar radiculopathy and low back range of motion limitation are also credibly made in the record.

Dr. Gellasch testified that while he unaware of preexisting degenerative condition, he treated DS for her complaints of pain with chiropractic treatment, which over time provided relief and permitted DS to resume some of her daily activities. He further testified that he referred DS to Dr. Correa for electrodiagnostic testing, the results of which confirm lumbar radiculopathy in which Dr. Gellasch utilized in his treatment plan.

Respondent relies on the report of Dr. Dudick, who opined that maximum chiropractic benefit had been achieved during treatment provided by Dr. Grossman, prior to the commencement of treatment with Dr. Gellasch. Dr. Bowen opined that the electrodiagnostic testing performed "was not indicated by information provided by Dr. Correa".

Based on the credible medical record before me, particularly medical reports, treatment notes and testimony of Dr. Gellasch, I find that the treatment and testing at issue in this arbitration were reasonable and medically necessary to treat injuries received in the accident, and those bills are payable by respondent as medical expense benefits, subject to relevant fee schedule, copay and deductible, if any.

The bills of Dr. Grossman and Capitol Open MRI at issue in this arbitration are, based on the record before me, reflective of fee schedule, copay and deductible, and are not payable as medical expense benefits.

Claimant's attorney is entitled to reasonable attorney's fees, and by application of RPC 1.5, and in view of the time necessary to reasonably prepare and present this case, I find that fee to be \$1,500.00, which is consonant with the award.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Philip Grossman, DC	\$338.55	\$0.00	
Dr. Eric Gellasch	\$3,438.00	\$3,438.00	Provider
Dr. Al Correa	\$2,232.00	\$2,232.00	Provider
Capitol Open MRI	\$198.00	\$0.00	

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

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): \$1,500.00

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

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

June 2, 2003

Date

Michael F. Carnevale II, Esq.