

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

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In the Matter of the Arbitration between

(Claimant)

v.  
State Farm Insurance Co.  
and  
AIG Claim Services, Inc.  
(Respondent)

AAA CASE NO.: 18 Z 600 16530 01  
INS. CO. CLAIMS NO.: A0071908

DRP NAME: Patrick W. Foley  
NATURE OF DISPUTE: Eligibility

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**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: claimants.

1. ORAL HEARING held on January 14, 2003.
2. ALL PARTIES APPEARED at the oral hearing(s) .

NO ONE 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:

This arbitration arises as a result of an automobile accident that occurred on May 6, 2000. The claimants herein were passengers in a vehicle being operated by an insured of respondent AIG. The claimants originally filed this Demand against respondent AIG seeking payment for PIP benefits. Upon investigation, it was alleged that one of the two claimants resided with a resident relative who had automobile insurance from respondent State Farm Insurance and the claimants amended their Demand to include respondent State Farm Insurance. It was also alleged that the other claimant might have resided with

a relative who owned an automobile. The sole issue raised in this matter is one of coverage by both respondents and there are no issues raised as to the reasonable, necessity or causal relationship of the treatment received by each claimant.

From the claimant UKC the undersigned has the following documents:

- A copy of the report of Community Neurology Associates dated August 16, 2000, setting forth results of EMG/NCV testing performed on her;
- A copy of the report of Gordon Family Chiropractic Center dated November 20, 2000, as well as prior narrative reports from Dr. J. S. Gordon, DC;
- A copy of the MRI results for cervical and lumbar MRIs performed on claimant UKC by Open MRI of Fairview on July 29, 2000;
- A copy of the Emergency Room records for Emergency Room treatment rendered to claimant UKC on the day of the accident; and
- A copy of all bills in dispute.

From the claimant DR the undersigned has the following documents:

- The report of Chiropractic Associates of Park Avenue dated August 4, 2000;
- Copy of the initial neurological consultation of Community Neurology Associates dated November 29, 2000;
- A copy of MRI results of the MRIs performed on claimant DR's cervical and lumbar spine on August 9, 2000 at Open MRI of Fairview;
- A copy of the Emergency Room records for treatment rendered to claimant DR in the Emergency Room on the day of the accident at Muhlenberg Hospital; and
- A copy of all bills in dispute.

From the respondent AIG the undersigned has the following documents:

- A copy of the police report herein;
- A copy of the EUO transcript of claimant UKC;
- A copy of the Registration Application of UKC's mother;
- A copy of the EUO transcript of claimant DR;
- A copy of the Registration Application of a vehicle allegedly owned by claimant DR's sister; and
- A copy of various Subpoenas issued to individuals for depositions in this matter.

From the respondent State Farm Insurance the undersigned has the following documents:

- A Certification of underwriter, Michelle Holler, indicating that claimant UKC's mother never had a policy of automobile insurance with respondent State Farm; and
- A copy of the transcript of claimant UKC's EUO.

Both respondents maintain that they are not responsible to provide PIP coverage to either of these claimants for different reasons. With reference to respondent State Farm, the claimants amended their Demand to bring State Farm into this case based on a Division of Motor Vehicle check that was conducted upon claimant UKC's mother. That check indicated that the claimant UKC's mother had an automobile, specifically a 1984 Audi registered in her name with a State Farm policy. Claimant UKC, during her sworn EUO testimony, indicated that her mother may have owned an Audi automobile, however, it was not working on the day of this accident and was not insured. The claimant UKC repeatedly denied that she lived with any other relative at her residence who had a policy of automobile insurance on the date of this accident.

The respondent AIG attempted to subpoena the deposition of claimant UKC's mother, without success. For its part, respondent State Farm has produced a Sworn Affidavit of an underwriter indicating that a policy of insurance was never issued to UKC's mother by State Farm. There is no other proof that respondent State Farm, in fact, ever issued a policy to any relative of UKC. In sum, the proofs as they exist concerning respondent State Farm are extremely weak. Neither the claimant nor the respondent AIG has met its burden to show by a preponderance of the evidence that respondent State Farm, in fact, issued coverage on the day of this accident, which coverage would be responsible for PIP benefits to either of these claimants. Therefore, the claim as it relates to respondent State Farm is denied.

With reference to respondent AIG, both claimants have made a claim for PIP benefits against that carrier. As to UKC, the respondent has been unable to demonstrate, by a preponderance of the evidence, that any other coverage is available to her. The respondent would have the undersigned deny this claim because the claimant's mother failed to appear for a subpoenaed deposition. The respondent has cited no case, statute or code provision that would require the relative of a claimant for PIP benefits to cooperate in a PIP investigation. The undersigned is unable to draw the conclusion that claimant UKC, in any way, thwarted the investigation of the respondent into this claim by advising her mother not to cooperate. Accordingly, it is the finding herein that the claimant UKC has met her burden with respect to proving that a valid basis for PIP coverage on the part of AIG existed on the day of the accident. Therefore, AIG shall be held responsible for PIP benefits for claimant UKC.

Likewise, with reference to claimant DR, the respondent AIG alleges that the claimant's sister had an automobile on the day of the accident and may have had coverage for said automobile. The respondent has been unable to refer to any carrier, policy

number or claim number which would have indicated that coverage did, in fact, exist for claimant DR's sister. Likewise, claimant DR appeared for an EUO, as well as all other matters scheduled by respondent AIG. Claimant DR submitted testimony at the time of her EUO that she did not reside with any family member who had insurance in effect as of May 6, 2000. As set forth above, AIG would urge the undersigned to bar PIP coverage in this matter because the claimant's sister has not cooperated by appearing for a deposition. As indicated, the undersigned knows of no case, statute or code provision that would support that conclusion. Accordingly, the finding herein is that claimant DR has met her burden in showing that respondent AIG was responsible to provide PIP coverage to her on the date of this accident.

As indicated above, there has been no contest raised as to the reasonable, necessity and causal relationship of the treatment rendered to both claimants herein. The undersigned has examined the reports supplied and finds the treatment rendered to be reasonable, necessary and causally related. Accordingly, respondent AIG shall pay these claims, in full. With the consent of the parties, this award is rendered subject to the New Jersey Medical Fee Schedule as well as deductible and co-pay for both claimants. The claimants waived the payment of interest.

The claimants have prevailed in this matter and, accordingly, their attorney is entitled to an award of fees and costs. The claimants' attorney has submitted an Affidavit of Services setting forth 11 hours of time seeking payment at \$250.00 per hour, for a total of \$2,750.00. The attorney for respondent AIG has commented orally on this Affidavit, indicating that the Affidavit sets forth excessive time and that the hourly rate is excessive. The undersigned agrees with the respondent's position in this matter on both counts and finds the proper award of fees in this matter to be \$1,750.00, or 10 hours at \$175.00 per hour, plus costs in the amount of \$325.00.

5. MEDICAL EXPENSE BENEFITS:

Awarded

As to claimant U.C.

Provider	Amount Claimed	Amount Awarded	Payable to
Chiropractic Ass. of Park Avenue	\$6,126.30	\$6,126.30	Provider*
Community Neurology Ass.	\$3,398.00	\$3,398.00	Provider*
Open MRI of Fairview	\$2,100.00	\$2,100.00	Provider*
Muhlenberg Regional M.C.	\$183.00	\$183.00	Provider*

As to claimant D.R.

Chiropractic Ass. of Park Avenue	\$3,666.00	\$3,666.00	Provider*
Community Neurology Ass.	\$366.00	\$366.00	Provider*
Muhlenberg Regional M.C.	\$182.00	\$182.00	Provider*

\*Subject to the New Jersey Medical Fee Schedule, as well as deductible and co-pay.

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): \$1750.00

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

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

February 20, 2003

Date

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Patrick W. Foley, Esq.