A M E R I C A N A R B I T R A T I O N A S S O C I A T I O N
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.
Allstate New Jersey Ins. Co.
(Respondent)

AAA CASE NO.: 18 Z 600 16692 03
INS. CO. CLAIMS NO.: 1874058124CS
DRP NAME: Nanci G. Stokes
NATURE OF DISPUTE: Fee Schedule, 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: F.S.

1. ORAL HEARING held on 1/7/04.

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).

The claims were amended to $893.90.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

F.S. was involved in a motor vehicle accident on 8/31/02 from which the within matter arises.

Nature of Dispute:

I. Is claimant entitled to additional reimbursement for CPT codes 95930 and 95927?

II. Is claimant entitled to reimbursement for CPT code 95957?

III. Is claimant entitled to reimbursement for an office visit on 1/29/03?

IV. Is claimant entitled to additional reimbursement for neurologic testing on 2/19/03?

The following documentation was submitted for consideration and reviewed:

Claimant:
Demand including bill, medical records, pre-certification documentation and assignment.
Submission dated 12/17/03 including: arbitration statement, EOBs, CPT manual excerpts.
Certification of Attorney Services

Respondent:
Submission dated 12/5/03 including: letter memorandum, coding references, EOBs, payment ledger, letter to patient.

I also heard the arguments of counsel.

I. CPT codes 95930 and 95927 utilized by the provider for its services do not appear on the New Jersey Fee Schedule. Pursuant to N.J.A.C. 11:3-29.4(e), for services not included in the fee schedule, the insurer's limit of liability for any medical expense benefit shall be a reasonable amount considering the fee schedule amount for similar services. Where no similar service is identified on the fee schedule, the insurer's limit of liability shall not exceed the usual, customary and reasonable fee in the region where the services were provided. The respondent made payment for each service, but reduced the bill asserting that the fees charged was not usual, customary and reasonable. No explanation as to calculation/basis of the amount paid is provided. Claimant seeks the balance of what was billed.

In Cobo vs. Market Transition Facility, 293 N.J. Super. 374, (App. Div. 1996), the issue of establishing a usual, customary and reasonable charge was addressed. Specifically, it is the medical provider, not the insurance carrier, who establishes the provider's usual and customary rate. Id. at 389. An insurance carrier is to review the medical provider's fee to insure that the charge reflects a usual and customary rate, however, the provider is entitled to its billing rate so long as it is reasonable. Id. at 386. The Cobo Court identified factors to be utilized in determining the reasonableness of the provider's fee, including: (1) the fees charged by other providers for the subject service, (2) the provider's billing history, and (3) any disparity in billing submitted to different insurance carriers. Id. at 387.

Claimant supplies EOBs to support its entitlement to additional reimbursement. The EOBs indicate consitent billing of these codes, but reimbursement in varying amounts. While respondent is not bound by the actions of other carriers, the evidence is relevant to the reasonableness of the fees charged by claimant. Given the lack of evidence to the contrary, I find that the provider has demonstrated an entitlement to additional payment for these services. Most carriers reimbursed CPT 95927 at $415 and thus, I find that $51.64 is owed for CPT code 95927. No carrier reimbursed CPT code 95930 at $415 and

I find that $208 should be paid for this service based on the evidence and thus, $37.98 is owed for CPT code 95930.

II. CPT code 95957 refers to a special EEG test. Specifically, the code is described as "digital analysis of EEG'. Dr. Pendino states that the digital analysis is used to identify features that cannot be seen by the naked during visual inspection of the EEG and increases the diagnostic yield of the EEG. Other carriers have reimbursed this code.

The AMA CPT assistant states it is not appropriate to bill the digital analysis unless utilized when performing certain EEG services, namely those services under codes 95816, 95819 or 95954. CPT code 95957 is not a stand alone procedure. The EEG code billed by Dr. Pendino is not one of the three codes denitrified. Rather, Dr. Pendino bills CPT code 95812 or EEG extended monitoring up to one hour. Based on the evidence submitted, I find that CPT 95957 should not be billed when performed with services described by CPT code 95812. Thus, the denial was proper.

III. Based on the evidence presented, the bill was properly submitted to respondent for payment. There is no medical defense to the charge for an office visit. Services after the office evaluation were paid. The evaluation is awarded in the amount of $68, subject to prior payment.

IV. The provider billed for 6 units of motor nerve conduction studies under CPT code 95904. The code description makes clear that the code is to be used once for any and all sites tested on a nerve. Bilateral testing of the median and ulnar nerves are reported in the records. Thus, only 4 units (right and left median and ulnar nerves) should be paid and were paid. No further amounts are due and owing.

I find that the claimant to be a prevailing party and I award attorney's fees and costs. Having reviewed the Certification of Services submitted by claimant and considered the opposition of respondent; I award $1,075 in fees and $285 in costs. The fees awarded are in conformity with guidelines set forth in R.P.C. 1.5. See Enright v. Lubow, 215 N.J. Super. 306 (App. Div.) cert denied 108 N.J. 93 (1987); Scullion v. State Farm Ins. Co.345 N.J. Super. 431, 437-438 (App. Div. 2001).

No interest calculation or argument was presented to support an award of interest in this matter and the claim is deemed waived.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Alexander Pendino, DO	$893.90	$157.62	Provider

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

The amount awarded is subject to the New Jersey Fee Schedule, co-payment and deductible obligations of F.S.

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

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): $1,075.00

(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

Nanci G. Stokes, Esq.