

CASE NO.

provided for under N.J.S.A. 39:6A-1.1 et seq., which is known as the “Automobile Insurance Cost Reduction Act.”

#### FINDINGS OF FACT:

Claimant submitted:

Demand for Arbitration dated October 10, 2002;  
Letter dated February 1, 2003; and  
Certification of Services dated February 4, 2003.

Respondent submitted:

Letter dated December 17, 2002; and  
Letter dated February 3, 2003.

In addition, Dr. Richard Inacio testified at the hearing on behalf of respondent.

On April 29, 2002, CWL was injured in an automobile accident. As a result of her injuries, on May 7, 2002, CWL went to Family Chiropractic Center of East Rutherford for treatment. Treatment consisted of 12 weeks of chiropractic care.

On May 17, 2002, CWL was referred to claimant for an MRI of the cervical spine and an MRI of the lumbar spine. On June 4, 2002, CWL underwent an MRI of the cervical spine and an MRI of the lumbar spine.

On June 19, 2002, claimant sent the bills for these MRIs to respondent for reimbursement. To date, respondent has not reimbursed claimant. As a result, claimant filed this claim for reimbursement.

The issue presented is whether or not June 4, 2002 MRIs were reasonable, necessary, and compatible with the protocols provided for under N.J.S.A. 39:6A-1.1 et seq. Stated otherwise, the issue is presented whether or not the MRIs were medically necessary.

Claimant argues that the MRIs were medically necessary. More specifically, claimant argues that the MRIs were reasonable and necessary based upon the referral by Dr. David Foster. Dr. Foster’s referral is attached to claimant’s February 1, 2003 submission as Exhibit D. Claimant also relies upon the test results themselves. They are attached to claimant’s February 1, 2003 submission as Exhibits E and F.

Respondent argues that the MRIs were not medically necessary. More specifically, respondent argues that the MRIs were not clinically. Respondent bases its argument on its Physician Advisor Review. That review is attached to respondent’s December 17, 2002 as well as respondent’s February 3, 2003 letter.

In respondent's physician advisor review, which is dated October 28, 2002, respondent's physician advisor, Dr. Inacio, states that the MRI of the cervical spine and the MRI of the lumbar spine were neither clinically supported nor medically necessary because:

"An initial trial course of chiropractic treatment for 4 weeks with a recent and thorough reevaluation would have been warranted prior to the ordering of these tests. Although the patient was treated for 12 visits prior to the MRI test it appears that the re-examination was not performed until 6/12/02 which was after the MRIs were performed."

At the hearing, Dr. Inacio reiterated that the re-examination should have been performed before the MRIs were performed.

In addition, respondent argues that a 50% pre-certification penalty applies.

#### CONCLUSIONS OF LAW:

In New Jersey, every standard automobile liability insurance policy shall contain personal injury protection benefits for the payment of benefits without regard negligence, liability, or fault. N.J.S.A. 39:6A-4. "Personal injury protection coverage" means and includes the payment of medical expense benefits, which must also be in accordance with the benefit plan provided in the policy and approved for reasonable, necessary, and appropriate treatment. N.J.S.A. 39:6A-4(a).

Thus "medical expenses" means reasonable and necessary expenses for treatment or services as provided by the policy." And "medically necessary" means that the treatment is consistent with the symptoms or diagnosis -- and that the treatment (1) is not primarily for the convenience of the injured person or provider, (2) is the most appropriate standard or level of service according to the standards of good practice and standard professional treatment protocols, and (3) does not involve any unnecessary diagnostic testing. N.J.S.A. 39:6A-2(m).

The regulatory definition of "medically necessary," however, differs slightly from the statutory definition of "medically necessary." Under the regulations, "medically necessary" or "medical necessity" means that the medical treatment or diagnostic test is consistent with the clinically supported symptoms, diagnoses, or indications of the injured person. N.J.A.C. 11:3-4.2. And "clinically supported" means that a health care provider made an assessment of current and/or historical subjective complaints, observations, objective findings, neurological indications, and physical tests. *Ibid.*

Statutes and regulations in *pari materia* are to be construed together to resolve doubts or uncertainties. *Brewer v. Porch*, 53 N.J. 167, 174 (1969). Stated otherwise, "Where statutes and regulations in some apparent conflict relate to the same subject matter, it is the duty of the court to construe them together as a unitary and harmonious whole." *Lawrence v. Butcher*, 130 N.J. Super. 209, 212 (App. Div. 1974). As a result, I will use the arguably more expansive definition of "medically necessary" or "medical necessity" contained in the administrative code.

In this case, claimant has not proven by a preponderance of the evidence, based on the information and documentation submitted that the MRIs were medically necessary. In short, claimant has not proven that the diagnostic testing was consistent with the clinically supported symptoms, diagnoses, or indications of CWL. In addition, claimant has not proven that it made an assessment of current and/or historical subjective complaints, observations, objective findings, neurological indications, and physical tests.

Simply stated, the May 17, 2002 referral by Dr. Foster, upon which claimant relies, contains no history and reason for study. That portion of the form is left blank. In addition, the copy of the treating physician’s chart, also upon which claimant relies, is insufficient to support the MRIs. While the chart may contain objective findings to support the MRIs, the chart itself, without a certification, affidavit, or testimony from the treating physician to interpret the chart, renders it insufficient to support the diagnostic testing.

Furthermore, the test results themselves are insufficient to support the diagnostic testing. “Medically necessary” or “medical necessity” means that the medical treatment or diagnostic test is consistent with the clinically supported symptoms, diagnoses, or indications of the injured person at the time of the medical treatment or diagnostic test. Similarly, “clinically supported” means that a health care provider made an assessment of current and/or historical subjective complaints, observations, objective findings, neurological indications, and physical tests at the time of the treatment or test.

To base the reasonableness, the necessity, or the appropriateness of a treatment or test after the fact would be unfair to both claimants and respondents alike because it would leave this determination to chance. As a result, the reasonableness of the decision a health care provider makes should be based upon all of the information and documentation available to that health care provider at the time the health care provider made his or her decision that the treatment or test was necessary. Given this reasoning, and based upon the information and documentation submitted, the MRIs that are at issue in this case were not medically necessary.

Claimant’s demand for the reimbursement of medical expense benefits is denied.

5. MEDICAL EXPENSE BENEFITS:

Denied

Provider                      Amount Claimed                      Amount Awarded                      Payable to

Provider	Amount Claimed	Amount Awarded	Payable to

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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 not prevail, and I award no 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): \$

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

(C) INTEREST is as follows: Not In Issue \$ .

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

March 19, 2003

Date

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Barry E. Moscowitz, Esq.