

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

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In the Matter of the Arbitration between

(Claimant)

v.  
New Jersey Re-Insurance Company  
(Respondent)

AAA CASE NO.: 18 Z 600 17372-02  
INS. CO. CLAIMS NO.: 2000702193  
DRP NAME: Richard A. De Michele  
NATURE OF DISPUTE: Medical  
Expense Benefits

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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: IHB and AB.

1. ORAL HEARING held on July 24, 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).

IHB  
Garden State Orthopedics \$370.00  
Dr. Richard Polino \$145.00

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

On November 22, 2000, IHB and AB were involved in a motor vehicle accident. Insurance coverage in effect at the time was for the period January 3, 2000 to January 3, 2001. Accordingly, AICRA is applicable.

**IHB**

On November 22, 2000, IHB was taken by ambulance to community medical center where she received emergency treatment. She was x-rayed, given medication and discharged.

Thereafter she came under the care of Dr. A. Richard Polino, a chiropractic physician at Delran Chiropractic, P.A. Dr. Polino's diagnosis was cervical, thoracic and lumbosacral strain and sprain, muscle spasm, cervical disc herniation, lumbar radiculopathy and knee strain and sprain. During the course of treatment, Dr. Polino ordered an MRI of the cervical spine and EMG/NCV of the lower extremities.

On December 15, 2000, IHB was seen by Dr. Lawrence Barr at Garden State Orthopedics. In his report, Dr. Barr indicated that since the time of the accident, IHB was experiencing pain radiating down in her right leg and into the right knee. An x-ray was taken of the cervical spine on November 22, 2000 and was reportedly normal. Dr. Barr's impression was acute traumatic cervical strain/sprain with myofascitis; acute lumbosacral strain and sprain with right lower radicular symptoms and contusion of the right knee with traumatic chondromalacia. He found that the patient was still quite symptomatic and recommended a course of therapy.

On February 7, 2001, IHB was seen by Dr. Eric Lipnack at Delaware Valley Physical Medicine Associates, P.C. as a referral from Dr. Polino. Dr. Lipnack indicated in his report that the patient attends chiropractic care three to four times a week. She has had no improvement. His diagnosis was acute cervical, dorsal and lumbar strain/sprain, and trapezius myofascitis. His treatment plan was continuation of chiropractic care and electric diagnostic testing along with mini-mental status examination.

On July 3, 2001, IHB was treated by Dr. Vincent M. Padula at Cherry Hill Pain Management Associates as a referral from Dr. Barr. Dr. Padula performed a right L4 transforaminal epidural. On July 18, Dr. Padula performed a right L5 transforaminal epidural injection. Dr. Padula's impression was that IHB suffered from a right-sided lumbar radiculitis in the setting of a lumbar herniated disc at the L4-5 and L3-4 levels.

On July 31, 2001, an IME was conducted by Adam Sackstein, MD at The Pain Management Center. At the time of the examination, IHB complained of low back pain radiating to the right lower extremities to the toes. Dr. Sackstein in his report indicated MRI scans revealed a small disc herniation at L4-5 with minimal spinal stenosis and a tiny protrusion at L3-4. He also indicated that the EMG taken on March 7, 2001, reportedly revealed a right L5 radiculopathy. Dr. Sackstein indicated that based on the history, physical examination, and imaging studies, it appears that IHB was suffering from a lumbar radiculopathy. He indicated based on the history given, "this appears to be causally related to the motor vehicle accident without exacerbation by the motor vehicle accident on January 14, 2001." He also indicated that she had gotten substantial relief from the lumbar epidural steroid injections performed by Dr. Padula which he felt were reasonable and medically necessary. He indicated that on physical examination, he noted a number of inconsistencies. He indicated that there appeared to be a significant component of symptom magnification. He indicated that she had reached maximum medical improvement from a pain management standpoint and believed that allowing a third and final lumbar epidural steroid injection would be reasonable. He indicated that a re-evaluation could be performed at that time.

On February 19, 2001, an orthopedic IME was performed by Dr. Irving P. Ratner. In his report dated February 19, 2001, Dr. Ratner indicated that IHB was involved in a second motor vehicle accident in mid January 2001. He noted that an MRI study which accompanied the patient showed advanced degenerative changes at the L4-5 level without evidence of a herniated disc or spinal stenosis. He noted that the MRI study of the knee performed on January 6, 2001 was read as normal. It was his opinion that IHB had suffered a lumbar strain and sprain injury and a contusion of the right knee. It was his opinion that no further orthopedic or chiropractic treatment would be necessary. He found that there were several non-anatomic findings present which belie the veracity of IHB's complaints and represents symptom exaggeration, probably for secondary gain. It was his opinion based on a reasonable medical certainty that orthopedic and chiropractic treatment had reached its maximum benefit and should be discontinued at this point.

In reference to Community Emergency Physicians, claimant has amended its bill to \$60.80 per the fee schedule. Respondent indicates that it has not received the bill from the medical provider and notes that the bill received was on the letterhead of Michael Harrison, Esquire. Respondent argues that claimant is left to her proof by forwarding an actual bill of Community Emergency Physicians and also proving that their charge is not a duplicate of the charges assessed by Community Medical Service for which the respondent has made payment. I find that claimant has met her burden of proof and that the bill is payable.

In reference to Delran Chiropractic, claimant agrees with respondent that the only date of service that has not been paid is March 23, 2001. Respondent indicates they did not have a bill from provider for the date of service. There is no indication that a bill for this date of service was actually received. I find that claimant has not met his burden of proof.

In reference to the claim of Garden State Orthopedics, claimant has withdrawn the bill for the x-ray of the knee. Claimant also agrees that the \$325.00 consultation charge, fee schedules at \$195.00 which has been paid by respondent. Regarding dates of service May 24, 2001 and July 10, 2001, respondent argues that these dates of service occurred post cut off. Claimant argues that the defense report of Dr. Ratner is completely inconsistent with the defense report of Dr. Sackstein. Dr. Sackstein found IHB was suffering from a lumbar radiculopathy and found that a third and final lumbar epidural steroid injection would be reasonable. Having heard the argument of counsel and having reviewed the submitted documentation, I find that claimant has met her burden of proof and that the treatment rendered by Garden State Orthopedics post cut-off was medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law Div. 1980) and Mewes v. Union Building and Construction Company, 45 N.J. Super. 89 (App. Div. 1957).

In reference to the claim of Delaware Valley Physical Medicine Associates, claimant argues that respondent failed to pay for range of motion testing in the amount of \$35.00 and manual muscle testing in the amount of \$80.00 performed on February 7, 2001. With reference to the nerve conduction study in the amount of \$2,004.00, respondent paid \$1,002.00 imposing a 50% co-payment reduction. Claimant produced a pre-certification documentation to establish that pre-certification requirements were complied with. Accordingly, I find that \$2,189.00 is due and owing to Delaware Valley Physical Medicine Associates.

In reference to Cherry Hill Pain Management, claimant acknowledges that the dates of service for June 15, 2001, respondent fee scheduled and made payment in the amount of \$171.00 with respect to the dates of service July 3, 2001 and July 18, 2001 for epidural injections, respondent's contention was that the procedures were not approved or that they had insufficient documentation. Claimant points out that Dr. Sackstein, respondent's IME physician especially approved as medically reasonable and medically necessary the three epidural injections for claimant. I find that the amount billed in the amount of \$1,995.00 is due and owing.

In reference to the claim of Able Health Products, respondent denied payment, arguing that the equipment was not medically necessary or reasonable. Respondent also argues the provider did not seek authorization or pre-certification for the equipment in conformity with N.J.A.C. 11:3-4.7. I find claimant has met his burden of proof as to medical necessity. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law Div. 1980). Claimant also argues that pre-certification is not necessary since some of the items were under \$50.00. I find that the total bill was over \$50.00 and that 50% reduction is applicable.

#### **AB**

AB was initially seen at Community Medical Center on the day of the accident where he was examined, x-rayed, treated and released. Thereafter he came under the care of John S. Sinibaldi, D.C., a chiropractic physician at Delran Chiropractic. Treatment consisted of specific spinal adjustments to restore proper vertebral motion and to reduce irritation in the vicinity of the spinal nerves. Modalities were used as an adjunct to manipulation. Diagnosis was cervical, thoracic and lumbar strain and sprain, myofascitis and muscle spasm. He found that AB had suffered soft tissue injuries to the cervical, thoracic and lumbar

sacral spine and was suffering residual pain. Dr. Sinibaldi indicated that AB was treated conservatively but did have permanent symptoms which would result in permanent limitations. Dates of treatment were from December 29, 2000 to April 5, 2001. During the course of treatment, Dr. Sinibaldi referred AB to open MRI. The MRI of the lumbar spine was reported as normal. AB was referred to Delaware Valley Physical Medicine Associates by Delran Chiropractic. At the time, he complained of neck pain, back pain and shooting pains in the back of his tail bone and lower back. Dr. Lipnack, D.O. diagnosis was acute cervical dorsal lumbar strain and sprain trapezius myofascitis. Treatment plan was to have the patient continue with his current chiropractic care with a follow up within four weeks.

On December 15, 2000, AB was referred to Garden State Orthopedic where he was seen by Dr. Lawrence I. Barr. Dr. Barr's diagnosis was acute traumatic thoracic sprain and strain and lumbar sprain and strain with myofascitis. Dr. Barr recommended physical therapy modalities such as heat, ice, massage and ultrasound and diathermy. He also recommended ibuprofen for relief of pain and inflammation.

On December 8, 2000, AB was seen by Dr. Samuel L. Friedman at Levitt Parkway Medical Center. At the time, AB complained of pain in the right mid and lower back area. Dr. Friedman's diagnosis was thoracic and lumbar spine strain. AB was started on a course of therapy.

On February 13, 2001 a chiropractic IME was performed by Douglas W. Zoolowski, D.C. AB's complaints at the time of the examination were headaches and low back pain. History taken indicated that AB missed two days of work as a result of the accident. Dr. Zoolowski's diagnosis was residual lumbosacral sprain. Dr. Zoolowski found that there was sufficient information to establish a causal relationship between the motor vehicle accident and treatment with the attending chiropractor. At the time of the examination, AB reported some ongoing residual headaches and low back pain. Dr. Zoolowski was of the opinion that AB had reached maximum benefit from treatment and although he experienced some residual soreness, it was his opinion that his condition would improve with a natural course of healing and time rather than treatment.

Chiropractic benefits were terminated effective February 14, 2001 based on the IME conducted by Dr. Zoolowski.

On May 22, 2001, an orthopedic IME was conducted by Gregory S. Maslow. Dr. Maslow's impression was right shoulder sprain and lumbar strain. It was Dr. Maslow's opinion that there was no objective evidence of permanency causally related to the accident of November 22, 2000 and that there was no indication of a need for additional treatment. He found that AB had not yet reached maximum medical improvement but expected that the tenderness which persisted on the day of the examination would resolve completely.

In addressing the chiropractic termination, claimant refers to the orthopedic IME conducted by Dr. Maslow on May 22, 2001 indicating that AB had not yet reached maximum medical improvement. Claimant also makes the argument that AB continued to improve under the care of Dr. Polino. AB was discharged on April 5, 2001 with only three months of therapy rehabilitation which was consistent with the care paths. Having heard the argument of counsel and having reviewed the submitted documentation, I find that claimant has met his burden of proof and that the chiropractic care rendered both pre cutoff and post cutoff was medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law Div. 1980).

In reference to Delaware Valley Physical Medicine Associates, respondent denied the charges in the amount of \$340.00 for services on March 7, 2001 because the services were performed at the request of claimant's treating chiropractor after respondent had established its chiropractic cut off date of February 14, 2001. I find that the amount claimed on behalf of Delaware Valley Physical Medicine Associates was medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

In reference to the billing by Able Health Products, respondent denied the charges on the grounds that equipment was not medically necessary or reasonable. I find that the durable medical equipment was

medically necessary and reasonable. Respondent also argues pre-certification was not requested. Having reviewed the submitted documentation, I find that there is no proof that claimant sought pre-authorization for the equipment and I find that respondent is entitled to impose a 50% co-payment.

In reference to Diagnostic Imaging Respondent denied the charge because the services were performed at the request of Claimant's treating chiropractor after Respondent had established its chiropractic cutoff dated. I find that the amount claimed on behalf of Diagnostic Imaging was medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law Div. 1980).

Having heard the arguments of counsel and having reviewed the submitted documentation and in accordance with Rule 29 I am awarding the sum of \$2,740.00 to Michael Sussen, Esquire and \$892.50 to David T. Lewis, Esquire in attorneys fees. This award of attorneys fees is consonant with the amount in issue and pursuant to Rule 1.5 of the Rules of Professional Conduct.

## 5. MEDICAL EXPENSE BENEFITS:

### Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
IHB			
Garden State Orthopedics	\$370.00	\$370.00	Garden State Orthopedics
Delaware Valley Physical Medicine Associates	\$2,040.00	\$2,040.00	Delaware Valley Physical Medicine Associates
Cherry Hill Pain Management	\$2,040.00	\$1,995.00	Cherry Hill Pain Management
Able Health Products	\$304.75	\$152.37	Able Health Products
AB			
Diagnostic Imaging	\$914.00	\$914.00	914.00
Delaware Valley Physical Medicine Associates	\$340.00	\$340.00	Delaware Valley Physical Medicine Associates
Dr. Richard Polino	\$2,641.50	\$2,641.50	Dr. Richard Polino
Able Health Products	\$297.64	\$148.82	Able Health Products

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

Award of Benefits is subject to fee schedule, co-payments and deductible.

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): Michael Sussen, Esquire \$2,740.00  
David T. Lewis, Esquire \$892.50

(C) INTEREST is as follows: Awarded in the amount of  
\$18.41 to Able Health Products .

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

October 6, 2003

Date

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Richard A. De Michele, Esq.