

AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.

MERCHANT MUTUAL INSURANCE
COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 17664 02

INS. CO. CLAIMS NO.: PA016809

DRP NAME: Barry K. Odell

NATURE OF DISPUTE: Pre-

Certification, 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: V.Z.

1. ORAL HEARING held on April 21, 2003.

2. NO ONE APPEARED at the oral hearing(s) for Respondent.

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).

1. The Demand was amended at time of hearing from \$3,908.80 to \$3,661.80 as set forth in Claimant's Arbitration Statement dated April 17, 2003.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The within matter arises from an automobile accident which occurred on August 8, 2001. Based upon the date of the accident and the argument of counsel, I find that the provisions of AICRA apply to the within claim.

At issue are the bills of Dr. David Stephens, D.C. of the Spinal Adjustment Center, Plainfield, New Jersey. Dr. Stephens treated Claimant from August 13, 2001 to and through his last date of treatment on July 29, 2002. His total bill for services was in the

amount of \$8,555.00. At issue are outstanding bills in the amount of \$3,661.80. Claimant has amended the Demand to reflect reductions which Respondent is entitled to as required by application of the New Jersey Medical Fee Schedule.

Respondent was noticed of this matter and the scheduling of the hearing, and phone calls were placed to the Respondent both prior to and at the time of hearing by the American Arbitration Association and the DRP. Respondent entered no appearance or opposition in this case.

Claimant argues that there are two grounds for the relief claimed. The first is for treatment rendered from August 13, 2001 through March 27, 2002. During that time Respondent took compliance penalties in the amount of \$2,341.80. The basis for this was that Respondent alleged that, according to the EOB presented by Claimant, it was entitled to a 50% penalty co-payment. However, Claimant has provided documentation to indicate that Pre-Certification was properly sought throughout the course of treatment. I therefore find that the Pre-Certification compliance penalty was not properly taken and award the \$2,341.80 as claimed.

The second portion of the claim asserted is for treatment rendered from April 2 through July 29, 2002. This constitutes 13 visits with Dr. Stephens. The fee schedule adjusted amount for these dates of treatment is \$1,320.00. The notes presented indicated that Claimant suffered a cervical disc bulge, a lumbar bulge and was diagnosed as suffering lumbalgia and subluxation of several vertebrae. Dr. Stephens' notes and records support the treatment provided. No opposition has been submitted by the Respondent. Based upon the uncontested evidence presented, I find that all treatment rendered was medically necessary and award the balance of the amount claimed. Based upon Claimant's computations, I also award interest payable to the provider in the amount of \$244.12.

The amount awarded has been adjusted as required by application of the New Jersey Medical Fee Schedule and is subject to no further reduction.

Claimant has also submitted an Affidavit of Service seeking counsel fees and costs. Claimant seeks legal fees in the amount of \$1,878.75 representing 8.35 hours of legal services at the rate of \$225.00 per hour. Based upon a review of the file, I note that no opposition was entered, no discovery was engaged in, and Claimant did prepare a detailed Arbitration Statement. Based upon a review of the file, I find that a counsel fee in the amount of \$1,250.00 would be consonant with both the amount of the award and with Rule 1.5 of the Supreme Court Rules of Professional Conduct. See, Enright v. Lubow, 215 N.J. Super. 306 (App. Div) cert. den. 108 N.J. 193 (1987). I also award reimbursement of costs in the amount of \$325.00.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded*	Payable to
Spinal Adjustment Center, P.C.	\$3,661.80	\$3,661.80	Provider

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

*Amount awarded is subject to no further reduction.

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): \$1,250.00

(C) INTEREST is as follows: Awarded in the amount of \$244.12, payable to provider.

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

April 22, 2003

Date

Barry K. Odell, Esq.