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.

STATE FARM INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 20078 1
INS. CO. CLAIMS NO.: 30V 1980 64
DRP NAME: John J. Fannan
NATURE OF DISPUTE: Eligibility, Med Pay

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: The Claimant.

1. ORAL HEARING held on April 18, 2002.

2. ALL PARTIES APPEARED at the oral hearing(s) .

Respondent appeared telephonically. (Laura Padulla, representative).

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 claim arises out of a motor vehicle accident which occurred on December 30, 1999. It is not disputed that the claimant was at the time of the accident operating a motor vehicle owned by her employer during the course of her employment. The claimant describes the subject vehicle as a van.

The respondent alleges the van is a commercial vehicle. In fact, an investigation into the registration of this vehicles indicates at the time of the accident it was owned by Renzenberger, Inc. and was registered commercially in Kansas. The respondent argued

that since the vehicle was a commercial vehicle, there is no PIP payable. Further, the respondent argued the claim was properly payable under Workers' Compensation.

The respondent is correct that PIP benefits required under NJSA 39:6A-4 are not payable to the claimant since the accident in question clearly did not involve a "automobile" as defined in NJSA 39:6A-2. However, pursuant to NJSA 39:6A-4(a) and NJAC 11:3-7.3, medical expense benefits must be included in automobile policies and are available where the bodily injury is "caused by an accident arising out of the ownership, maintenance or use… of a highway vehicle not owned by or furnished or available for the regular use of the named insured or any family member." Clearly, and respondent does not challenge, the commercial van which the claimant was operating qualifies by any definition as a "highway vehicle." The respondent however claims that the claimant is a "driver" by trade and the vehicle was available for her "regular and frequent use." No evidence is offered to support that position. It is clear the commercial nature of the van establishes it as one which was used in the business of the claimant's employer. There is simply no evidence which would indicate that van was furnished or available for the regular use of the claimant. I find therefore that the claimant was eligible to make claim for medical pay benefits under the respondent's policy of insurance.

Respondent also argues that the Workers' Compensation claim would be primary in this matter. No case law or statutory law is offered in support of that argument. In fact, that argument is entirely inapposite to the finding of the court in Speiser v. Harleysville Insurance Company, 237 NJ Super 507 (App. Div. 1990). There the Court noted that once the medical treatment is determined to be reasonable, medical necessary and causally related to the injuries sustained in the accident in question, the insurer was obligated by statute (NJSA 39:6A-4) to pay such benefits as they become due. Once the insurer's obligation to pay medical benefits was establish, the obligation is primary. See Aetna Casualty/Surety Company v. Parra Manufacturing Company, 176 N.J. Super 532 (App. Div. 1980) and Olivero v. New Jersey Manufacturers Insurance Company, 199 N.J. Super 191 (App. Div. 1985). Absolutely no distinction is drawn between PIP Benefits and Med-Pay Benefits, principally because no such distinction can be made under the statutory scheme. Thus, the obligation of the insurer is primary.

I find that medical reports and records which have been submitted have established to a preponderance of the evidence that the treatment for which payment is sought herein was reasonable, medically necessary and for a condition or conditions causally related to the subject accident. Therefore, I find that the bills submitted are to be paid by the respondent under the med-pay portion of the policy.

The statutory minimum for med-pay benefits is $1000.00. This is more than adequate to pay the bill of Cherry Street Medical Associates, which total $902.00. Thus, the bill of Cherry Street Medical Associates in the amount of $902.00 is awarded in full, subject to application of the New Jersey Fee Schedule and Multiple Procedure Reduction Formula.

The initial Demand for Arbitration contained a claim of UMDNJ in an unspecified amount. No evidence whatsoever has been presented with respect to that bill, and therefore the claim of UMDNJ is denied.

Inasmuch as no calculation of interest has been provided, the claim for interest is deemed to have been waived.

I further find that the claimant was successful and is entitled to an award of counsel fees. Counsel for the claimant has submitted a Certification of Services wherein is sought counsel fees in the amount of $640.00 together with costs of $325.00.

I find that an award of counsel fees in the amount of $550.00 is consonant with the amount of the award in this matter and is consistent with the requisites of RPC 1.5 as well as consistent with the degree of effort, expertise and experience required for a successful prosecution of this claim. I also award costs in the amount of $325.00.

This matter was the subject of an oral hearing conducted on April 18, 2002. The hearing was held open to afford the parties the opportunity to make additional submissions and was declared closed as of June 1, 2002.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
902 Cherry Street Medical Associates	$902.00	$902.00	Cherry St. Medical Associates
UMDNJ	?	-0-	

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 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): $550.00

(C) INTEREST is as follows: Waived.

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

July 14, 2002 _____
Date John J. Fannan, Esq.