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.
IFA INSURANCE CO.
(Respondent)

AAA CASE NO.: 18 Z 600 02825 03
INS. CO. CLAIMS NO.: 29776
DRP NAME: Barry E. Moscowitz
NATURE OF DISPUTE: Eligibility

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: RB.

1. ORAL HEARING held on June 13, 2003.

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

NO ONE appeared telephonically.

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 matter concerns a dispute regarding the recovery of medical expense benefits under personal injury protection coverage arising out of an automobile accident that occurred on February 10, 2001. It was submitted to me on the initiative of claimant by way of Demand for Arbitration dated January 23, 2003.

More specifically, this dispute involving medical expense benefits concernsthe eligibility of the provider to be compensated under the terms of the policy or under the regulations promulgatged by the Commissioner of Banking and Insurance.

FINDINGS OF FACT:

Claimants submitted:

Demand for Arbitation dated January 23, 2003;
Letter dated March 14, 2003; and
Letter dated June 20, 2003.

Respondent submitted a letter dated March 11, 2003.

On February 10, 2001, RB was injured in an automobile accident. As a result of her injuries, RB went to claimant for treatment. On April 3, April 5, and April 8, 2002, claimant treated RB.

Claimant alleges that it submitted the bills for this treatment to respondent for payment and that respondent did not pay the bills. As a result, claimant filed this Demand for Arbitration. Respondent contends that it never paid the bills because it never received them. Respondent also contends that the treatment never took place.

The issue presented is two-fold: (1) whether or not claimant submitted the bills to respondent for payment; and (2) if claimant did submit the bills, then whether or not the treatment took place.

Regarding the first issue, claimant argues that it submitted the bills for this treatment to respondent for payment. In support of its argument, claimant relies upon the HICFA forms themselves. Claimant also relies upon the argument contained in its March 14, 2003 submission. In its submission, claimant states, "Respondent's attorney . . . denies receiving the bill for those two sessions prior to the filing of this Arbitration. This is the second time in three months with two different providers that Respondent denies receipt of the billing . . ."

Regarding the second issue, respondent argues that it never received the bills for this treatment. In support of its argument, respondent relies upon the argument contained in its March 11, 2003 submission. In its submission, respondent states, "On May 1, 2002, respondent received a bill from claimant for dates of service 3/7/02 through 3/20/02. Along with this invoice, the provider also attached office notes, which reveal an alleged session on April 8, 2002 . . . Respondent has never received this bill prior to the filing of the arbitration demand . . ."

Regarding the second issue, claimant argues that the treatment took place. In support of its argument, claimant relies upon the argument contained in its March 14, 2003 submission. As claimant states, "It appears that the therapist who treated [RB] on April 8, 2002[] did not see the ledger with April 3, 2002 and April 5, 2002[] and inserted his notes following the March 20, 2002 session[] because there was room to write his notes." In further support of its argument, claimant relies upon the Certification of Nachum Loss, PT dated March 14, 2003. It is attached to claimant's March 14, 2003 submission.

Respondent, on the other hand, argues that the treatment never took place. In support of its argument, respondent relies upon the argument contained in its March 11, 2003 submission. As respondent states, ". . . it is questionable as to whether or not the sessions of 4/3/02 and 4/5/03 ever took place. Why were these sessions not listed in the previously provided notes from [claimant]?" Lastly, why was the 4/8/02 session not placed on the invoice that was received and paid by respondent? It is the position of respondent that two out of the three session dates in April 2002 never took place as evidenced by the provider's own notes and it is further our position that the 4/8/02 session was never received by respondent."

CONCLUSIONS OF LAW:

Regarding the first issue, I conclude that claimant has proven by a preponderance of the evidence that it submitted the bills to respondent for payment. I base this conclusion on the HICFA forms as well as the argument contained in its March 14, 2003 submission.

Regarding the second issue, I conclude that claimant has proven by a preponderance of the evidence that the treatment took place. I base this conclusion on the claimant's notes as well as the Certification of Nachum Loss, PT dated March 14, 2003.

Claimant shall be awarded the medical expense benefits it claims in the amount set forth in section 5 of this Award.

Finally, I award claimant attorney's fees. Under N.J.A.C. 11:3-5.6(d)(3), an award may include attorney's fees for a successful claimant in an amount consonant with the award and with Rule 1.5 of the Supreme Court's Rules of Professional Conduct. Rule 1.5 states that a lawyer's fee shall be reasonable. The factors to be considered are, among others: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; and the experience, reputation, and ability of the lawyer or lawyers performing the services.

In this case, claimant was successful. As a result, I award claimant attorney's fees consonant with the amount of the award. The amount awarded considers the factors enumerated above as well as respondent's objection to claimant's hourly rate and time expended. The amount is set forth in secton 10 of this Award.

Claimant shall be awarded costs and attorney's fees in the amount set forth in section 10 of this Award.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Manual Physical Therapy	$384.00	$384.00	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 shall be subject to all applicable fee schedules, deductibles, and/or co-payments consistent with this Award.

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 for filing fee

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): $857.50

(C) INTEREST is as follows: waived per the Claimant. $.

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

August 17, 2003
Date

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Barry E. Moscowitz, Esq.