

AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.
PENN NATIONAL INSURANCE
(Respondent)

AAA CASE NO.: 18 Z 600 04467 02
INS. CO. CLAIMS NO.: 17373533
DRP NAME: Michael F. Carnevale II
NATURE OF DISPUTE: Medical
Necessity

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: MS.

1. ORAL HEARING held on October 2, 2002.
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:

Claimant in this matter is a chiropractic care provider, which brings this case on assignment from MS, who was injured in an automobile accident on January 10, 2000, while insured by respondent. The issue in this AICRA matter is the medical necessity of twelve chiropractic visits from April 3 through May 20, 2000.

There is no real dispute that MS sustained some neck and back injury in the accident, nor is there any real question that MS did suffer from some preexisting condition in the form of migraine headaches. Respondent disputes the medical necessity of the treatment in

question, and relies on the report of the chiropractor Peter Cerenzo, DC, dated March 17, 2000, who opines that a causal relationship between MS' cervical injuries and the automobile accident are established. However, Dr. Cerenzo further opines that no further chiropractic treatment was necessary, based on the subjective complaints and "lack of objective findings". Respondent also offers four pages of a transcript of an examination under oath in which MS testified that she "didn't feel much better" after the additional treatment. She also testified that since the cessation of treatment, she feels worse and her medication has doubled, as her symptoms have "gotten worse".

MS relies on the reports of the treating chiropractor, Phillip Grossman, DC, Barry Fass, MD, the orthopaedist Michael Grenis, MD, the neurologist Charles Kososky, MD, and an MRI from March 9, 2000, disclosing a disc bulge at C3-4.

MS' condition is summed up by Dr. Kososky, who opines that as a result of the accident MS "suffered a cervical sprain and strain and is suffering from muscle contraction headaches. This is superimposed on her history of migraine headaches."

All MS' treating doctors noted spasm and muscular contraction, and the records clearly indicate that the chiropractic treatment rendered assisted in controlling the spasms and clearly lessening the muscle-contraction related headaches which were superimposed upon the preexisting migraine headaches. Respondent's own submission in the form of the truncated version of the EUO transcript supports the effectiveness of the treatment rendered, as MS' condition deteriorated after treatment ended.

I find that the treatment rendered by Dr. Grossman which is at issue in this proceeding was reasonable and medically necessary to treat injuries received in the accident, and I conclude that those bills are payable by respondent as medical expense benefits, subject to relevant fee schedule, copay and deductible.

I note that time was spent by MS' counsel in preparation and attendance for MS' EUO, as well as more typical arbitration preparation tasks. Claimant's attorney is entitled to reasonable attorney's fees, and by application of RPC 1.5, and in view of the time necessary to reasonably prepare and present this case, I find that fee to be \$1,500.00, which is consonant with the award. An interest calculation has been submitted by MS.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
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Philip Grossman, DC	\$1,298.00	\$1,298.00	Provider

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

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): \$1,500.00

(C) INTEREST is as follows: Awarded in the amount of \$162.25.

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

January 30, 2003

Date

Michael F. Carnevale II, Esq.