

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

In the Matter of the Arbitration between

(Claimant)

v.
NJM INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 05003 03
INS. CO. CLAIMS NO.: 0285953702
DRP NAME: Andrew A. Patriaco
NATURE OF DISPUTE: Proper Coding

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: C.M.

1. ORAL HEARING held on August 4, 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).

The claim for Biofeedback in the amount of \$465.00 was withdrawn.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

This is a claim arising out of an accident that occurred on August 4, 2003.

Claimant submitted the following documents:

- 1) Demand for Arbitration received on March 24, 2003 with attachments.
- 2) Letter dated August 4, 2003 with attachments.

Respondent submitted the following documents:

- 1) Letter dated July 8, 2003 with attachments.
- 2) Letter dated September 11, 2003.

The amount in issue represents the difference between the charges for CPT code 21085 and D7880. Claimant billed \$1,200.00 each for an upper and lower orthotic and billed under CPT code 21085. Respondent paid \$714.00 for each orthotic under D7880. Respondent contends that the proper code for the orthotics in issue is D7880.

This DRP, and others, have decided this issue previously. I have found that CPT code 21085 is the proper designation for the orthotic supplied and that \$1,200.00 is the proper charge.

CPT code 21085 describes an oral surgical splint. According to Doctor Federman, the splint is a custom fabricated TMJ orthotic that requires impressions, study models, bite analysis, laboratory instructions, and patient education upon insertion of the TMJ orthotic. CPT code 21085 refers to temporomandibular joint disorders. Doctor Federman also argues that D7880 describes a soft rubber splint that prevents traumatic sports injuries. It can be used in emergency situations until a hard appliance can be fabricated.

Claimant argues that he fabricated a hard acrylic orthotic, similar to what would be used in a post operative situation. The orthotic is custom fashioned to integrate ramps (articulators) to accomplish repositioning. The orthotic is identical to those used with surgical fixation, except for the absence of ivy loops/wires. Repositioning cannot be accomplished by a soft orthotic.

I have considered the arguments raised by respondent and the new arguments made after my prior Awards.

It is abundantly clear to this DRP, and I find as a fact, that the proper code for the orthotics supplied by the claimant was CPT code 21085 and that the charge for each appliance is \$1,200.00. Respondent's argument that D7880 is the proper coding is, simply, not tenable given the description of the orthotic supplied and the work involved in preparing it and adjusting it for each patient as well as the purpose for which it is designed. I find that claimant prevails on this issue.

Counsel for claimant seeks a fee of \$1,660.00 which represents 8.3 hours at \$200.00 per hour. Pursuant to Rule 30, I award \$1,200.00 as attorney's fees.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
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Cranio Associates	\$973.00	\$972.00	Provider

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

Claimant's calculation of the amount in issue was incorrect. The proper amount is \$972.00.

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): \$1,200.00

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

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

October 10, 2003

Date

Andrew A. Patriaco, Esq.