

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

In the Matter of the Arbitration between

(Claimant)

v.

Liberty Mutual
(Respondent)

AAA CASE NO.: 18 Z 600 05621 03

INS. CO. CLAIMS NO.:

LA35900243231102

DRP NAME: Lisa A. Ganzhorn

NATURE OF DISPUTE: Eligibility,
Failure to Cooperate,

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 patient.

1. ORAL HEARING held on September 15, 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:

I find that the patient was injured in an automobile accident on May 26, 2002. The claim was denied seeking information from the claimant with regard to eligibility issues. The amount outstanding for this provider is \$3486.00.

I have reviewed the following documents submitted in connection with this claim as well as hearing argument of counsel as well as testimony of a representative from the Respondent Doug Oxley which was recorded by Court Reporter:

From the claimant:

Arbitration Demand

Letter of June 24, 2003 and August 17, 2003 with attachments

Certification of Services

From the respondent:

Letter of May 21, 2003

The patient was a passenger in a vehicle involved in the accident. She is seeking PIP coverage from the insurer for the owner of the motor vehicle. The Respondent indicates that the patient did not specifically cooperate with them in their investigation and therefore no coverage is applicable.

A representative from the SIU group for Liberty did testify at the arbitration. He advised that they wanted to take a statement from the patient as a result of several factors in this matter including that the patient had prior losses, the vehicle was driven from the scene with minor damage, there was no ambulance called and one of the providers was being investigated - not the one filing this claim.

Personal counsel did have the patient appear for a statement which unfortunately was affected by numerous unrelated issues. The patient's infant was present and was crying. Counsel for the patient changed during the course of the interview as a result of other commitments. The interview went forward through an interpreter. Mr. Oxley spent approximately four hours at the office and obtained about one hour and forty five minutes on tape. He did indicate he was able to get through the questions with regard to resident relative and whether anyone had a vehicle registered to them at the time of the accident. The investigator did feel comfortable that he had covered the issues with regard to PIP eligibility before the interview was terminated. He did not get into any specifics with regard to the treatment or testing of the provider in this case. He was not aware of any indication of fraud or questionable practices. The interview was not finished because of a dispute with regard to a transcript of the statement already obtained. I find however that is not germane to the issue before me.

Based on the information presented to me and the credible testimony of Mr. Oxley I find that the patient did in fact cooperate with the respondent such that she is entitled to coverage and has established a claim for PIP benefits. The eligibility issue had been covered in the interview. There were no indications of fraud with regard to this provider.

The next issue is the medical necessity of the treatment. The Respondent has provided copies of letters denying pre certification for chiropractic and TMJ treatment. I was not supplied with any letters directed to this provider. Claimant has provided copies of medical reports and records from Dr. Sabato which indicates that she had neck and shoulder pain with radiating pain from the neck into the arms with tingling and paresthesia of her forearms and hand. She also had lower back pain and shooting pain from the lower back into the buttocks and thighs. Range of motion in the neck and low back was restricted. Motor examination showed weakness of the arms and the legs. Sensory exam showed decreased pin and temperature perception in the right arm and

right leg. EMG and nerve conduction studies were done of the upper and lower extremities. Pre certification documentation was forwarded to the Respondent.

I find that the claimant has sustained their burden of proof and find the medical treatment was reasonable, necessary and related to the motor vehicle accident.

In as much as no calculation of interest was submitted, the claim for interest is deemed waived.

I find the claimant is entitled to an award of counsel fees since they were successful in this action. I note counsel's objection to the certification of services. I award based on the nature and complexity of the case, the amount awarded and the expertise, effort and experience required \$1150.00 to Francis J. Devito, PA plus costs as set forth below.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Plainfield Neurology	\$3,486.00	\$3,486.00	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): \$1150.00

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

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

October 22, 2003

Date

Lisa A. Ganzhorn, Esq.