

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

In the Matter of the Arbitration between

(Claimant)

v.

LIBERTY MUTUAL INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 07131 02
INS. CO. CLAIMS NO.: L01-A359-
02262751

DRP NAME: Barry K. Odell
NATURE OF DISPUTE: Reasonable and
Necessary

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: S.C.

1. ORAL HEARING held on May 21, 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 made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

1. Claimant amended the Demand at time of hearing to \$1,219.00 as set forth in its May 20, 2003 Arbitration Statement.
2. The parties stipulate that the provisions of AICRA apply to the within claim.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The within matter arises from an automobile accident which occurred on October 3, 2001. The parties have stipulated that the provisions of AICRA apply to the within claim.

At issue are the bills of Spinal Adjustment Center for an unpaid examination billed on November 6, 2001 and for unpaid dates of services provided from January 17, 2002 up to and through the last date of treatment, April 3, 2002. Treatment began at the Spinal Adjustment Center, under the care of Dr. David Stephens, on October 5, 2001.

Although Claimant argues that no bills were paid after January 17, 2002, Respondent argues in its Arbitration Statement that it paid for bills through January 28, 2002 and that all bills thereafter were denied as not being medically necessary.

Respondent relies upon its May 21, 2002 and July 23, 2002 submissions. Although Explanation of Benefit forms are attached, along with screen print-outs from Respondent's computer system, no written explanation is provided in the parties' written submissions explaining what bills were paid and what bills were outstanding. It does, however, appear from the Explanation of Review reprints provided that there were payments made for chiropractic care only through January 14, 2002. It also indicates that the November 6, 2001 office visit which is claimed was unpaid. I therefore find that pursuant to the proofs presented by Respondent, Claimant is correct in listing the outstanding dates of services and that contrary to Respondent's Arbitration Statement, bills were not paid through January 28, 2002 but rather all treatment after January 17, 2002 remained unpaid.

Respondent's proofs indicate a denial was issued on January 22, 2002 for further chiropractic care. This was prepared by Dr. David Quinn, D.C. Dr. Quinn noted that there had been 28 sessions of chiropractic care to date and that 20 additional visits at a frequency of 5 times per week over 4 weeks were requested. Dr. Quinn noted that an MRI revealed disc bulging at L3-4 and L4-5 and that this was not "suggestive of long-term chiropractic management".

An appeal was apparently taken and the decision was upheld.

Respondent also had the patient undergo an independent chiropractic examination with a chiropractor, Dr. Scarpellino. The examination was performed on April 13, 2002. The patient apparently filled out a questionnaire in Spanish. She indicated that she was presently treating 4 times a week and was complaining of pain in her head, neck and back, and there had been improvement in her neck but no improvement in her back. Dr. Scarpellino's examination revealed tenderness and hypertonicity in the neck, there was tenderness in the lumbar spine and slight pain on full range of motion. A Kemp's test was positive bilaterally. A straight leg raising test was positive for low back pain. The Bechterew's sign was positive for low back pain. The MRI films were reviewed which revealed bulges in the lumbar spine. A lumbar myositis and myalgia was diagnosed. Dr. Scarpellino found that there was a causal relationship between the accident and the symptoms and that the patient was no longer in need of chiropractic treatment. No opinion was given as to the length, reasonableness or frequency of the treatment rendered to date by Dr. Scarpellino.

Counsel for Claimant has provided the notes and reports of Dr. Stephens. His periodic reports note improvement in range of motion in the cervical and lumbar spine through March 22, 2002, the last date of a re-examination. He ended treatment on April 3, 2002, the date of Dr. Scarpellino's report. In his last report he noted that there had been 42 visits as of March 28, 2002. The patient's prognosis remained guarded. However, there appeared to be little change in the patient's condition from the prior examination of January 8, 2002.

Based upon a review of the records presented, I do find that there is a basis for treatment beyond the initial denial by the Respondent. Claimant continued to exhibit improvement with care and reported to Dr. Scarpellino that she had in fact improved in some aspects. However, there is no further documentation of any improvement after the March 22, 2002 re-examination. As noted by Dr. Scarpellino, the office notes presented were illegible and provided little information about any change in the patient's condition.

I find that all treatment rendered up to and through March 22, 2002 was medically necessary. I also find that the re-examination of November 6, 2001 was warranted. I award the fee schedule adjusted amount of \$784.00 for those dates of treatment, applying the \$90.00 per day cap for treatment as set forth in the fee schedule to those dates of treatment. I award interest in the amount of \$64.68 pursuant to Claimant's counsel's computation.

Counsel Claimant has submitted a Certification of Services seeking \$1,878.75 representing 8.35 hours of legal services. An hourly rate of \$225.00 has been applied. Counsel for Respondent argues that the hourly rate is excessive and that the time claimed is excessive. I note that a hearing was held, and an Arbitration Statement was submitted. No significant discovery was engaged in. No legal issues specific to this case were briefed. Based upon a review of the file, I award a counsel fee in the amount of \$1,200.00 finding same to be consonant with both the amount of the award and with Rule 1.5 of the Supreme Court Rules of Professional Conduct. See, Enright v. Lubow, 215 N.J. Super. 306 (App. Div) cert. den. 108 N.J. 193 (1987). I also award reimbursement of costs in the amount of \$325.00 representing the filing fee only.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded*	Payable to
Spinal Adjustment Center, P.C.	\$1,219.00	\$784.00	Provider

Spinal Adjustment Center, P.C.	\$1,219.00	\$784.00	Provider
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Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

*Amount awarded is subject to no further reductions, other than those permitted by application of the remaining policy co-payment and deductible.

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: Awarded in the amount of \$64.68.

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

July 1, 2003

Date

Barry K. Odell, Esq.