

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

In the Matter of the Arbitration between

(Claimant)

v.
ALLSTATE INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 08189 03
INS. CO. CLAIMS NO.: 1873792772
DRP NAME: Kate Rabassa Wallen
NATURE OF DISPUTE: Medical
Equipment, Pre-Certification, 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: insured.

1. ORAL HEARING held on 10/7/03.

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:

The insured was involved in a motor vehicle accident on 6/1/01. The sole issues in this case involve the medical necessity of a MENS unit on 12/12/01 and whether pre-certification was requested by the provider.

No information was provided regarding respondent's pre-certification plan. Respondent submitted its physician advisor determination with contact date of 12/12/01 in which Dr. Robert Null determined that there was a lack of clinical data to support the medical

necessity of the MENS unit purchase. The unit was provided to the insured on 12/12/01 and bill was dated 12/18/01. There is no evidence that a request for pre-certification (prior to sale) was made by the provider. Claimant argues that, because the review determination states "Non-Certified", the respondent treated the request for approval of the MENS unit as a pre-certification request regardless of when it was made. This argument does not have to be addressed, however, because respondent has not submitted its pre-certification plan.

Claimant submits a prescription dated 11/28/01 of Dr. Eric Lipnack (Delaware Valley Physical Medicine), as well as a prescription on an Able Health Products form dated 11/28/01 with signature of Dr. Jason Polino, DC. Neither of these contain clinical data. None of the reports of Dr. Polino provided by claimant, with the exception of the post-filing (of the demand) report dated 7/14/03, mention the MENS unit, although there is clinical data contained in those reports.

Based on the reports of Dr. Polino containing clinical data taken together with the 7/14/03 report, I find in favor of claimant and award the amount claimed, after applying the fee schedule, \$410.61 (\$350.61 for the TENS unit billed under CPT E0720 and \$60.00 for 3 months of supplies billed under CPT A4595).

With respect to attorney fees and costs, I have reviewed claimant's attorney fee certification and considered respondent's comments. I find that attorney fees of \$822.50 are consonant with the award and with RPC 1.5. The filing fee of \$285.00 is awarded as a cost. Interest in the amount of \$33.87 is awarded.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Able Health Products	\$513.50	\$410.61	Provider

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

Subject to reduction based on application of any remaining deductible or co-payment.

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): \$285.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$822.50

(C) INTEREST is as follows: Awarded in the amount of \$33.87 .

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

10/7/03

Date

Kate Rabassa Wallen, Esq.