

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

In the Matter of the Arbitration between

(Claimant)

v.
PRUDENTIAL INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 08778 03
INS. CO. CLAIMS NO.: 33W15762C
DRP NAME: **Barry E. Moscowitz**
NATURE OF DISPUTE: **Business
Formation**

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: MA.

1. ORAL HEARING held on October 8, 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:

FINDINGS OF FACT:

Claimant submitted:

Demand for Arbitration dated May 12, 2003;
Letter dated June 23, 2003; and
Letter dated October 15, 2003.

Respondent submitted:

Letter dated September 8, 2003; and
Letter dated September 15, 2003.

On June 24, 2002, MA was injured in an automobile accident. As a result of his injuries, MA went to claimant for treatment. From October 17, 2002 through February 6, 2003, claimant treated MA. More specifically, MA underwent chiropractic treatment.

Claimant submitted the bills for this treatment to respondent for payment. Respondent, however, denied payment. As a result, claimant filed this Demand for Arbitration.

The issue presented is whether or not the business form of claimant is consistent with the principles set forth in N.J.A.C. 13:35-6.16(b).

Claimant argues that its business form is consistent with the principles set forth in N.J.A.C. 13:35-6.16(b). In support of its argument, claimant relies upon a letter from the State Board of Medical Examiners dated June 25, 2003; a letter from NJ Board of Examiners dated April 17, 1998; a letter from NJ Board of Medical Examiners dated March 23, 1998; the Award of another DRP dated May 9, 2002; the unpublished opinion of Selective Insurance Company of America v. Medical Alliances, et al, bearing docket number MRS-L-3521-02, decided on January 31, 2003; and the unpublished opinion of The Prudential Property and Casualty Insurance Company of New Jersey v. Scott Greenberg, D.C., et al, bearing docket number MRS-L-3802-00, decided in September 2002. These documents are attached to claimant's October 15, 2003 submission. According to claimant, "as long as a facility is owned solely by licensed medical providers, it is not inappropriate for that facility to operate as an LLC or Inc. In fact, Judge Villanueva stated that to rule otherwise would put 'form over substance.'"

Respondent, on the other hand, argues that the business format of claimant is inconsistent with the principles set forth in N.J.A.C. 13:35-6.16(b). In support of its argument, respondent relies upon its argument contained in its September 15, 2003 submission. In particular, respondent relies upon N.J.A.C. 13:35-6.16(f). According to respondent, N.J.A.C. 13:35-6.16(f) does not permit the business form of claimant to be a limited liability company.

CONCLUSIONS OF LAW:

I conclude that claimant has proven by a preponderance of the evidence that the business form of claimant is consistent with the principles set forth in N.J.A.C. 13:35-6.16(b). I base this conclusion upon all of the detailed information, documentation, and authority claimant submitted. In short, claimant must be owned solely by licensed medical providers, and in this case, claimant is owned solely by licensed medical providers. As a result, the business form of claimant is not inconsistent with the principles set forth in N.J.A.C. 13:35-6.16(b). In fact, it is expressly permitted by the New Jersey State Board of Medical Examiners. Claimant shall be awarded the medical expense benefits at issue.

I also conclude that claimant is entitled to attorney’s fees.

Under N.J.A.C. 11:3-5.6(d)(3), an award may include attorney's fees for a successful claimant in an amount consonant with the award and with Rule 1.5 of the Supreme Court's Rules of Professional Conduct. Rule 1.5 states that a lawyer's fee shall be reasonable. The factors to be considered are, among others: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; and the experience, reputation, and ability of the lawyer or lawyers performing the services.

In this case, claimant was successful. As a result, claimant is entitled to attorney's fees consonant with the amount of the Award and Rule 1.5. Claimant shall be awarded costs and attorney’s fees in the amount set forth in section 10 of this Award. The amount awarded also considers respondent’s objection to claimant’s hourly rate and time expended.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
River Edge Rehabilitation	\$2,005.00	\$2,005.00	Provider

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

The amount awarded shall be subject to all applicable fee schedules, deductibles, and/or co-payments consistent with this Award.

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 for filing fee

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,520

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

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

November 25, 2003

Date

Barry E. Moscowitz, Esq.