

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

In the Matter of the Arbitration between

(Claimant)

v.
NJ MANUFACTURERS INSURANCE CO.
(Respondent)

AAA CASE NO.: 18 Z 600 09775 03
INS. CO. CLAIMS NO.: 2001-759809
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: J.K.

1. ORAL HEARING held on October 20, 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:

The within matter arises from an automobile accident which occurred on July 2, 2001. Based upon the date of the accident, I do find that the provisions of AICRA apply to the within claim. No issues regarding Claimant's compliance with Respondent's Pre-Certification/Decision Point Review plan have been raised.

At issue are the bills of three providers, JFK Medical Center and Edison Radiology Group for CT scans of the cervical and lumbar spine performed on October 16, 2001, and the bills of Dr. Mark, Weinstein, D.C. Dr. Weinstein provided chiropractic care to Claimant between July 13, 2001 and February 21, 2003. The amended amount of his claim is \$4,387.10.

Additional medical records were offered at hearing by Claimant, regarding the bills for the CT scans. The records of Dr. R. Neil Pelman who ordered the scans, were offered. Counsel for Respondent objected to these additional documents as being submitted outside of the time requirements of Rule 17 which requires the exchange of information no less than 20 days prior to the hearing. Counsel for Claimant argues that these reports were already in the possession of Respondent and that they were prepared as a result of authorized care, paid for by the Respondent. They were not forwarded in this arbitration proceeding, to counsel for Respondent, as they were contained in a file which had been closed by a secretary without counsel's authority. I find that good cause has been shown for the admission of these documents already provided to the Respondent, and have allowed Respondent the opportunity to submit additional replies to same.

The bills for the CT scan, cervical and lumbar, were denied based upon the report of Mark L. Silverstein, M.D. He found there was no objective evidence or orthopedic pathology to warrant these scans. Dr. Vigman, Respondent's neurological expert, also determined that there was no indication for any electroneurodiagnostic testing or cervical or lumbar MRI scans. He found that there was no evidence of any radiculopathy to warrant same. Dr. Silverstein found that there was no evidence of neurologic involvement to warrant an MRI or CT scan of the cervical or lumbar spine.

Records and reports of Dr. Vigman did note complaints of radiating pain and numbness. The electroneurodiagnostic study performed was compatible with a right-sided C-5 radiculopathy. Dr. Pelman recommended the CT scans in his September 7, 2001 report. These scans revealed three disc herniations and three disc bulges in the cervical and lumbar spine. Based upon a review of Dr. Pelman's records and notes, as supported by the detailed report of Dr. Weinstein, who also notes radicular complaints, I find that this testing was medically necessary. I therefore award the amounts claimed, subject to reduction as required by application of the New Jersey Medical Fee Schedule.

The remaining bill presented for payment is that of Dr. Weinstein, who provided chiropractic care. Dr. Weinstein has presented his bill for care in the amount of \$4,387.10, as indicated in Claimant's supplemental submission dated October 23, 2003. Counsel for Respondent argues that all bills through the Termination of Benefits on August 29, 2001, were paid in full. Claimant has presented an additional itemized bill with its October 23, 2003 submission. Respondent has also provided Explanation of Benefit forms with its September 16, 2003 submission regarding these bills. I find that based upon the evidence presented by Respondent, all bills for treatment through August 29, 2001 have been paid in full. Reductions in the amount paid are for valid fee schedule, co-payment and deductible deductions, and no amount is outstanding for these dates of treatment.

The remaining bills are for care provided from September 7, 2001 up to and through the last date of claimed treatment based on the itemized bill, February 21, 2003. Claimant claims that all of this treatment is medically necessary as a result of the automobile accident. Claimant testified at hearing that he did in fact improve through the end of

treatment. Respondent relies upon the report of Dr. Douglas Zoolkoski, D.C. dated August 22, 2001. Respondent argues that Dr. Zoolkoski found that Claimant was in need of no further chiropractic care after September 1, 2001 and that he reached maximum improvement as of September 2, 2001. What Dr. Zoolkoski did state in his August 22, 2001 report was that he recommended continued treatment through September 2, 2001 with maximum medical improvement expected to have been reached by that time. It appears that Dr. Zoolkoski did not again see the patient at that time to determine if his anticipated and expected state of recovery had indeed occurred. He noted that at the time of his exam the findings were minimal and that allowing additional treatment was in his opinion at that point liberal.

Nonetheless, Claimant did testify that he was improving through care at that time. This is supported by the findings in Dr. Weinstein's report. He indicates that improvement was occurring in range of motion, ability to perform activities of daily living and tolerate range of motion, with passive and active stretching. However, in Dr. Weinstein's October 28, 2001 report, he noted that there was a final evaluation performed on October 19, 2001. There had been improvements in range of motion, a reduction in pain and an increase in the patient's overall abilities. This would warrant a deviation from the Care Paths as set forth in N.J.A.C. 11:3-4 (Appendix) and would warrant care after the Termination of Benefits instituted based upon Dr. Zoolkoski's speculative conclusion that maximum medical improvement would be reached.

In his report, Dr. Weinstein noted that, as of the date of his final examination on October 19, 2001, the patient's prognosis was guarded. It was noted that he would always have neck and upper middle and lower back pain with right shoulder and right wrist pain and right upper and lower extremity numbness and tingling resulting in future and consequential limitations. Residual pain, spasm and numbness and tingling were expected to persist. Dr. Weinstein stated that, "The patient does show temporary improvement with continued care".

No other medical records or reports from Dr. Weinstein's later treatment are provided. Based upon Dr. Weinstein's conclusion that only temporary improvement was secured through additional care, I find that all treatment after his final examination as noted in his last report was not medically necessary as defined by N.J.A.C. 11:3-4.2. I find that the additional care provided only temporary relief from pain, was not medically necessary as defined by the Administrative Code and that referenced in the Care Paths and deny any claim for treatment beyond October 19, 2001. No other evidence in support of the claim is provided by Dr. Weinstein. I therefore award the amount of \$975.00, for treatment from September 7 to October 19, 2001, adjusted for the New Jersey Medical Fee Schedule.

Counsel for Respondent argues that the amounts due should be further reduced, by an unknown amount, as the bills had been submitted to a "primary insurance" carrier. However, it appears from the billing record that this primary insurance carrier to whom the bills were submitted was in fact this Respondent.

As no argument or computation with regard to the issue of interest on the awarded amount has been presented, I find this portion of the claim to have been waived.

Counsel for Claimant has submitted a Certification of Services seeking counsel fees and costs. Counsel seeks \$2,907.00 representing 12.92 hours of legal services at a rate of \$225.00 per hour along with counsel fees and costs. Based upon a review of the file, I find that a counsel fee in the amount of \$1,650.00 would 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 \$285.00 representing the filing fee only.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded*	Payable to
JFK Medical Ctr.	\$ 970.00	\$970.00	Provider
Edison Radiology Group	\$ 454.00	\$454.00	Provider
Dr. Mark Weinstein	\$4,387.10	\$975.00	Provider

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

*Amount awarded to Dr. Mark Weinstein of Affiliated Health Professionals, P.C. has been adjusted by the New Jersey Medical Fee Schedule. Bills of JFK Medical Center and Edison Radiology Group are to be reduced as required by application of the New Jersey Medical Fee Schedule. All bills are to be reduced as required by any remaining policy co-payment and/or 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): \$285.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,650.00

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

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

December 17, 2003

Date

Barry K. Odell, Esq.