**A M E R I C A N A R B I T R A T I O N A S S O C I A T I O N**
**NO-FAULT/ACCIDENT CLAIMS**

In the Matter of the Arbitration between

(Claimant)

v.

SELECTIVE INSURANCE COMPANY
(Respondent)

**AAA CASE NO.: 18 Z 600 04522 02**
**INS. CO. CLAIMS NO.: 018158954664**
**DRP NAME: Andrew A. Patriaco**
**NATURE OF DISPUTE: PPO Agreement**

## 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: T.F.

1. ORAL HEARING held on July 9, 2002.

2. ALL PARTIES APPEARED at the oral hearing(s) .

Claimant 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:

This is a claim arising out of an accident that occurred on July 19, 2001.

Claimant submitted the following documents:

1) Demand for Arbitration received on February 28, 2002.
2) The bills in dispute.
3) X-ray reports dated August 8, 2001.
4) MRI reports dated August 17, 2001.
5) Prescription for MRI scans and x-rays.

6) Assignment.
7) EOBs.
8) Patient registration sheet.
9) Proof of insurance.
10) PIP application.
11) Letter dated July 22, 2002 with Exhibits A-D.
12) Certification of services.

Respondent submitted the following documents:

1) Letter dated May 25, 2002 with attachments.
2) Agreement between CHN and MCSI with amendment.
3) Agreement between ALTA Services and Selective.
4) Agreement between CHN and East Bergen Imaging.
5) Treatment request form.
6) EOBs.
7) Letter dated July 29, 2002.

The bills in issue represent the charges for MRI scans of the cervical and lumbar spine performed on August 17, 2001 and x-rays of the left elbow, forearm and wrist performed on August 8, 2001.

Respondent assessed a $545.00 PPO reduction, a 20% co-payment and a 50% penalty for failure to attempt to pre-certify with regard to the MRI of the lumbar spine. Respondent paid $225.00 towards the provider's charge of $995.00.

Respondent assessed a $500.00 PPO reduction and a 20% co-payment to the charge of $995.00 for the cervical spine MRI. Respondent paid $396.00.

Respondent also took PPO reductions on the charges for the 3 x-rays and a 20% co-payment. The PPO reduction was $104.42. Respondent paid $88.46 toward the charge of $215.00.

Claimant contends that the PPO reductions are invalid in that the CHN agreement between the claimant and CHN does not apply to this claim.

First, respondent argues that American Arbitration Association Rules do not permit the DRP to determine the nature and validity of the subject PPO agreement.

Rule 3B provides, in pertinent part, that if any party contends that the Association lacks subject matter jurisdiction such party may seek a ruling dismissing the arbitration. The request for dismissal must occur within 45 days after the Demand for Arbitration is filed with the American Arbitration Association. "If no such procedure is initiated, it will be assumed that there is no objection to the Demand for Arbitration." Respondent did not request a Rule 3B dismissal based on lack of subject matter jurisdiction. Therefore, I find that respondent has waived the jurisdiction issue.

Nevertheless, I do find that the Association's Rules and the case law permit the DRP to decide the validity of the PPO Agreement in this matter.

Rule 1 provides that any dispute of substantive law arising out of the application of these administrative rules shall be determined by the DRP. I find that the validity of the PPO Agreement is such a dispute. Further, I direct the parties to State Farm vs. Molino, 289 N.J. Super 406 (App. Div. 1996) and Rodriguez vs. General Acc. Ins. Co., 325 N.J. Super 163 (Ch. Div. 1999).

The issue of the validity of PPO Agreements in an automobile accident setting has been addressed by other arbitrators and the Courts. There is a divergence of opinions. The Appellate Division has not decided the issue.

I find that the CHN Agreement is in violation of the New Jersey PIP Statute and the administrative code. Section 10.1 of the Agreement provides that the provider shall have the sole responsibility for the care and treatment of the eligible person. CHN nor any other party performing utilization management shall have the right to govern the level of a care of a patient. This provision is in direct conflict with the PIP statute and the administrative code. In a claim for PIP benefits, the insurer does have the right to limit and/or terminate treatment via decision point reviews, pre-certification requirements and independent medical examinations. Indeed, the adoption of AICRA was enacted to provide cost control measures for medical treatment. The CHN agreement is in direct conflict with AICRA.

Next, I find the agreement is also invalid in that neither CHN nor respondent have the right to refer an insured involved in an automobile accident to a provider. The provider could not legally obtain a referral of an injured person in an automobile accident. An injured insured has the absolute right to select and obtain his or her own medical care.

Respondent also applied the 20% co-payment and a 50% co-payment penalty to this claim pursuant to the New Jersey PIP Statute. It defies logic and reasoning that the insurer can pick and choose which provisions of the CHN Agreement it chooses to enforce and which provisions of the PIP Statute it chooses to enforce. The CHN Agreement is completely silent on the interaction between the agreement and the PIP statute. The agreement is poorly written and ambiguous and does not provide the medical provider with the relationship between the PIP statute and the agreement. As such, the agreement must be construed against the drafter.

The intent of AICRA was to provide a cost containment procedure for medical bills which in turn would result in a reduction of insurance premiums. The CHN Agreement does not provide a mechanism for the reduction of an insured's automobile insurance premium. The attempt to apply the PPO agreement by the insurer is, again, in contravention to AICRA and the PIP Statute.

In light of the foregoing, I find that the PPO reductions in this case were invalid. I also find that respondent's application of a 50% co-payment for the lumbar MRI scan was appropriate. Claimant has not produced any evidence that there was an attempt to obtain pre-certification for the lumbar MRI scan.

The award entered herein is subject to any remaining deductible, co-payment and the fee schedule. Respondent is entitled to a 50% reduction in the charge for the lumbar MRI scan. Respondent is also entitled to credits for payments made previously for the amounts in issue.

Counsel for claimant seeks a fee of $1,320.00 which represents 6.6 hours at $200.00 per hour. Pursuant to Rule 30, I award $1,000.00 as attorney's fees.

5. MEDICAL EXPENSE BENEFITS:

Awarded

| Provider | Amount Claimed | Amount Awarded | Payable to |
|---|---|---|---|
| 401 Medical Imaging | $2,205.00 | $2,205.00 | 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.

The award entered herein is subject to any remaining deductible, co-payment and the fee schedule. Respondent is entitled to a 50% reduction in the charge for the lumbar MRI scan. Respondent is also entitled to credits for payments made previously for the amounts in issue.

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): $1,000.00

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

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

October 15, 2002
Date

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Andrew A. Patriaco, Esq.