

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

In the Matter of the Arbitration between

(Claimant)

v.
PRUDENTIAL INSURANCE CO.
(Respondent)

AAA CASE NO.: 18 Z 600 04668 02
INS. CO. CLAIMS NO.: 33V00894C
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: D.G.

1. ORAL HEARING held on August 8, 2002.
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:

This is a claim arising out of an accident that occurred on January 3, 2001.

Claimant submitted the following documents:

- 1) Demand for Arbitration dated February 21, 2002.
- 2) Assignment.
- 3) The bill in dispute.
- 4) Letter dated May 14, 2002 with Exhibits 1-8.

- 5) Letter dated June 3, 2002 amending the claim to \$1,007.00.
- 6) Letter dated July 29, 2002 with attachments.
- 7) Certification of Doctor Conte dated August 6, 2002.
- 8) Certification for fee and costs.

Respondent submitted the following documents:

- 1) Letter dated May 7, 2002.
- 2) Letter dated July 15, 2002 with Exhibits A-H.
- 3) Letter from ALTA to Doctor Conte dated August 6, 2002 with EOB attached.

The DRP also heard the testimony of Ms. Sims who was offered as a witness on behalf of respondent.

The issue to be decided in this matter is whether the claimant is subject to PPO Agreement entered into between CHN and the claimant. The amount in issue represents PPO reductions taken by respondent.

For the reasons to follow the CHN contract in this matter is void and not enforceable for this claim.

The patient D.G. was not referred to the provider by CHN or Prudential. It would be unfair and inequitable to permit respondent to provide payment to Doctor Conte pursuant to the CHN Agreement. Respondent would be circumventing the PIP statute and not providing payment in accordance with the fee schedule.

The CHN Agreement states that if a new insurer enters into a payor agreement with CHN, then notice shall be provided to the provider. Although Ms. Sims testified that the custom and practice of CHN is to provide such notice, there is no evidence before me to indicate that notice was provided to Doctor Conte in this case.

The PPO Agreement itself is in complete contravention to the PIP statute. Under the terms of the agreement, CHN and/or insurers would refer patients to the provider. An automobile insurance carrier, under the PIP statute, has no right to refer patients to a provider. Further, under the CHN agreement, CHN or an insurer do not have the right to perform utilization to govern the level of care of a patient. Under AICRA, the insurer does have the right to govern the level of care by way of pre-certification and medical examinations. This is another obvious conflict between the PPO agreement and the PIP statute.

For the foregoing reasons, I find that the PPO Agreement in this matter is invalid. Respondent's reductions were improper. Therefore, I award \$1,007.00 to the claimant.

Counsel for claimant seeks a fee of \$1,687.50 which represents 6.75 hours at \$250.00 per hour. Pursuant to Rule 30, I award \$1,175.00 as attorney's fees.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Doctor Kenneth Conte	\$1,007.00	\$1,007.00	Provider

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

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): \$1,175.00

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

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

September 3, 2002
Date

Andrew A. Patriaco, Esq.

