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 05548 03
INS. CO. CLAIMS NO.: 4042907800
DRP NAME: Barry E. Moscowitz
NATURE OF DISPUTE: PPO Agreement and Medical Necessity

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: DJ.

1. ORAL HEARING held on July 28, 2003.

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

ALL PARTIES 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 matter concerns a dispute regarding the recovery of medical expense benefits under personal injury protection coverage arising out of an automobile accident that occurred on August 22, 2002. It was submitted to me on the initiative of claimant by way of Demand for Arbitration received by AAA on March 28, 2003.

More specifically, this dispute involving medical expense benefits concerns interpretation of the insurance contract and whether the treatment performed was reasonable, necessary, and compatible with the protocols provided for under AICRA.

FINDINGS OF FACT:

Claimant submitted:

Demand for Arbitration received by AAA on March 28, 2003; and
Letter dated June 14, 2003.

Respondent submitted a letter dated July 9, 2003.

On August 22, 2002, DJ was injured in an automobile accident. As a result of his injuries, DJ went to claimant for treatment. On September 30, 2002, claimant treated DJ. More specifically, DJ underwent an MRI of the cervical spine and an MRI of the lumbar spine.

On September 30, 2002, claimant submitted the bills for this testing to respondent for payment. Respondent paid the bill for the MRI of the cervical spine subject to a PPO reduction but did not pay for the MRI of the lumbar spine. As a result, claimant filed this Demand for Arbitration.

The issue presented is two-fold: (1) whether or not the PPO reduction was proper; and (2) whether or not the MRI of the lumbar spine was medically necessary.

Regarding the first issue, claimant argues that the PPO reduction was improper. In support of its argument, claimant relies upon its argument detailed in its June 14, 2003 submission. In summary, claimant argues that the PPO reduction was improper because the PPO contract operates outside the statutory and administrative scheme; respondent is not a direct party to the contract between claimant and CHN and no contract exists between respondent and claimant; and claimant was not notified that respondent had entered into an agreement with CHN to pay claimant.

Respondent, on the other hand, argues that its PPO reduction was proper. In support of its argument, respondent relies upon its argument contained in its submission. In summary, respondent argues that AICRA does not preclude a voluntary PPO agreement between private parties.

Regarding the second issue, claimant argues that the MRI of the lumbar spine was medically necessary. In support of its argument, claimant relies upon its argument detailed in its June 14, 2003 submission. In short, the MRI was medically necessary because DJ had radicular complaints following the accident and DJ did not undergo the testing within five days following the accident.

Respondent, on the other hand, argues that the MRI of the lumbar spine was not medically necessary. In support of its argument, respondent relies upon the report of Mark Dudick, D.C. dated April 21, 2003. According to respondent, the documentation did not support the medical necessity of the MRI.

CONCLUSIONS OF LAW:

Regarding the first issue, I conclude that claimant has proven by a preponderance of the evidence that the PPO reduction was improper. I base my conclusion on the detailed argument claimant sets forth in its June 14, 2003 submission.

Regarding the second issue, I conclude that claimant has proven by a preponderance of the evidence that the MRI of the lumbar spine was medically necessary. I base this conclusion on the detailed argument claimant sets forth in its June 14, 2003 submission.

Claimant shall be awarded the medical expense benefits it seeks. The amount is set forth in section 5 of this Award.

Claimant shall also be awarded attorney's fes.

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, I award claimant attorney's fees consonant with the amount of the award. The amount awarded considers the factors enumerated above as well as respondent's objection to claimant's hourly rate and time expended. The amount is set forth in secton 10 of this Award.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Newark Imaging Center	$1,030.70	$1,030.70	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): $325 for filing fee

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): $1,260

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

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

August 29, 2003
Date

Barry E. Moscowitz, Esq.