

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

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In the Matter of the Arbitration between

(Claimant)

v.  
MET LIFE AUTO & HOME INSURANCE COMPANY

(Respondent)

AAA CASE NO.: 18 Z 600 07028 03

INS. CO. CLAIMS NO.: ALB39435

DRP NAME:

Andrew A. Patriaco

NATURE OF DISPUTE: PPO Agreement

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**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: R.S.

1. ORAL HEARING held on August 27, 2003.
2. ALL PARTIES APPEARED at the oral hearing(s) .

Respondent 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).

Post hearing, the amount claimed was amended to \$1,520.00

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

This is a claim arising out of an accident that occurred on October 18, 2002.

Claimant submitted the following documents:

- 1) Demand for Arbitration with attachments dated April 23, 2003.
- 2) Letter dated May 30, 2003 with attachments.
- 3) Letter dated August 27, 2003 with attachments.

- 4) Letter dated September 15, 2003 with attachments.
- 5) Letter dated November 30, 2003 with attachments.

Respondent submitted the following documents:

- 1) Letter dated August 11, 2003 with attachments.

There are several areas of dispute.

First, claimant seeks \$862.00 for dates of service from October 22, 2002 to November 12, 2002. This amount represents PPO reductions taken by respondent. Claimant contends that the PPO reductions are invalid. Respondent relies on a CHN Agreement.

The DRP has decided this issue and has written several awards. In every case, I have decided that CHN's Agreement is not valid. I concur, in large part, with Judge LeBon's decision in the matter of Cluen (Seibel) v. CGU and Sylvester (Bidas) v. CGU, Burlington County DC-5437-01 and 5434-01.

I find that the CHN Agreement is in violation of the New Jersey PIP Statute and the administrative code. Section 8.1 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 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.

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.

I also note that under Section 6 of the Agreement, eligible persons are to receive covered services from a participating provider upon presentation of appropriate written documentation supplied by the payor identifying the patient as an eligible person. There are no proofs before me that such documentation was provided to the claimant.

In light of the foregoing, I find that the PPO reduction was improper. I award \$862.00 to claimant on this portion of the claim.

Next, claimant seeks \$180.00 for treatment provided on November 18, 2002 and November 19, 2002. Respondent contends that treatment had been certified for three times per week for four weeks from October 22, 2002 to November 22, 2002. The patient did receive treatment for 4 weeks which expired prior to November 18, 2002. Based on the foregoing, I find that respondent is entitled to a 50% reduction in claimant's charges for claimant's failure to attempt to pre-certify the additional treatment, pursuant to N.J.A.C. 11:3-4.7. Thus, I award \$90.00 on this portion of the claim.

Lastly, claimant seeks \$478.00 for 4 dates of service from March 5, 2003 to March 17, 2003. Respondent has denied payment based on the review of Doctor Inacio.

Doctor Inacio did certify treatment to March 5, 2003. However, he concluded that additional treatment would need to be supported by a new treatment plan and re-exam pursuant to the care paths and general practice standards. My review of the submissions did not reveal that such an exam occurred, nor were the treatment notes supplied for these dates of service. Therefore, I deny this portion of the claim.

Counsel for claimant seeks a fee of \$1,280.00 which represents 6.4 hours at \$200.00 per hour. Pursuant to Rule 30, I award \$975.00 as attorney's fees.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Northfield Health & Wellness	\$1,520.00	\$952.00	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): \$975.00

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

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

December 30, 2003

Date

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Andrew A. Patriaco, Esq.