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: MC.

1. ORAL HEARING held on April 8, 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:

This matter arose out of a motor vehicle accident that occurred on October 8, 2001.

This is an AICRA case.

Claimant is seeking payment for acupuncture treatment rendered to MC from October 17, 2001 through February 18, 2002.
A review of the HCIF's submitted by Claimant shows that a total of $3,643.72 in charges was billed for dates of service October 17, 2001 through February 18, 2002.

Claimant billed $154.00 under CPT 99205 for an office visit conducted on October 17, 2001. Respondent denied payment explaining that "services beyond scope of practice." Inasmuch as the office visit was conducted by a certified acupuncturist, not a licensed physician, it would have been appropriate to downcode CPT 99205 to CPT 97001, rather than denying payment for the office visit outright. Claimant is, then, entitled to reimbursement in the amount of $80.02 for the office visit conducted on October 17, 2001.

For dates of service October 17, 2001 through February 18, 2002, Claimant billed $95.00 under CPT 97780 (needle acupuncture), $7.00 under CPT 99070 (needles) and $34.00 under CPT 97016 (vaso-pneumatic device).

Inasmuch as it constitutes "unbundling," the charges for CPT 99070 and totaling $217.00 ($7.00 x 31 visits = $217.00) is not reimbursable.

Claimant produced copies of EOB's showing payment of CPT 97780 at $95.00 and CPT 97016 at $34.00, thereby establishing the UCR charges for those CPT codes as billed.

It is Respondent's position, though, that acupuncture is subject to the $90.00 daily cap.

Both Claimant and Main Chiropractic Center rendered treatment to MC on the same dates of service and the bills for chiropractic care were received first.

Viewing acupuncture as being subject to the $90.00 daily cap, then, Respondent denied all charges for acupuncture when the $90.00 per day cap had already been met by way of payments to Main Chiropractic Center, but then paid Claimant the remainder of the cap on dates on which Main Chiropractic Center had not met the $90.00 daily cap and paid Claimant the full $90.00 on the dates on which it, alone, had rendered treatment to MC.

For dates of service October 17, 2001 through November 19, 2001, all of the charges for acupuncture procedures were denied, because the $90.00 per day cap had already been met by way of payments to Main Chiropractic Center; with the exception of November 7, 2001, when only $83.65 was paid to Main Chiropractic, so Claimant was reimbursed the remaining balance of $6.35.

For dates of service November 20, 2001 through January 4, 2002, the following occurred: Claimant was only reimbursed $76.02 on each of four (4) dates of service (November 20, 2001, November 29, 2001, January 2, 2002 and January 4, 2002) even though Main Chiropractic Center did not render any treatment to MC on those dates of service. Claimant, then, was reimbursed a total of $304.08, instead of $360.00 for those dates of service. For dates of service November 21, 2001, November 26, 2001, November 28, 2001 and December 17, 2001, all the charges for acupuncture procedures were denied, because the $90.00 per day cap had already been met by way of payments to Main
Chiropractic Center. For dates of service December 3, 2001, December 5, 2001, December 10, 2001 and December 12, 2001, Claimant was paid a total of $25.40 ($6.35 x 4 = $25.40), because Main Chiropractic Center had already been paid $83.65 for each of those dates of service.

For dates of service January 7, 2002 through February 18, 2002, Claimant's bills were processed as follows: Claimant was paid a total of $450.00 for dates of service January 7, 2002, January 21, 2002, January 28, 2002, February 11, 2001 and February 18, 2002 ($90.00 x 5 = $450.00), because no chiropractic treatment had been rendered to MC on those dates of service. For dates of service January 9, 2002 and January 14, 2002, Claimant was paid a total of $12.70 ($6.35 x 2 = $12.70), because Main Chiropractic Center had already been paid $83.65 for each of those dates of service.

Respondent contends that Claimant has been paid in full.

Claimant disagrees.

Claimant argues that it is entitled to additional reimbursement, because acupuncture treatments are not subject to the $90.00 daily cap.

The arguments of counsel, together with the submissions of the parties have been taken into consideration on the issue of whether acupuncture treatment comes within the $90.00 daily cap enacted under N.J.A.C. 11:3-29.4(m).

N.J.A.C. 11:3-29.4(m), provides, in pertinent part, that

"The daily maximum allowable fee shall be $90.00 for Physical Medicine and Rehabilitation procedures (CPT 97001 through 98943) but not including Osteopathic Manipulative Treatment actually performed by the osteopathic physician or a medical doctor (CPT 98925 through 98929). The daily maximum applies when such services are performed for the same patient on the same date. ..."

The title of N.J.A.C. 11:3-29.4 reads: "Application of Medical Fee Schedules" from which it can be inferred that the application of the $90.00 daily cap is limited to Physical Medicine and Rehabilitation procedures whose CPT codes are found in the medical fee schedule. The CPT codes for acupuncture treatment with needles (CPT 9770) and pneumatic device (CPT 97016) are UCR codes that do not appear in the prevailing medical fee schedule and, therefore, should not be included in the range of CPT codes within the parentheses following the words "Physical Medicine and Rehabilitation procedures" in N.J.A.C. 11:3-29.4(m).

Also of significance is that the Physical Medicine and Rehabilitation procedures whose CPT codes are listed in the medical fee schedule are generally services that are commonly provided together. Those are traditional types of treatment and/or modalities
that are commonly provided together, such as physical therapy, mechanical traction, hot/cold packs, electric stimulation, whirlpool, ultrasound, massage and chiropractic manipulation. Acupuncture, on the other hand, is a non-traditional form of treatment which is administered by a specialist and not provided together with other procedures during the same visit. It is not the type of treatment that should be included with Physical Medicine and Rehabilitation procedures.

Acupuncture is, then, a separate and distinct type of treatment which is not subject to the $90.00 daily cap.

Respondent contends that if not subject to the $90.00 daily cap, then the billing for the treatment rendered to MC under CPT 97780 (needle acupuncture) and CPT 97016 (vaso-pneumatic device) should be subject to the multiple procedures reduction formula.

Under N.J.A.C. 11:3-29.4(f)(1),

"When multiple ... procedures are performed on the same patient by the same provider at the same time or during the same visit, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The primary procedure at a single session shall be paid at 100 percent of the eligible charge, the second procedure at no more than 50 percent of the upper limit in the fee schedule for that particular procedure, and if performed, any additional procedures at no more than 25 percent of the upper limits in the fee schedule for those particular procedures."

As explained by Claimant, generally, needle acupuncture is performed on all areas of a patient's body. Where, however, the patient may feel pain and/or discomfort from the needle, a "cupping" or "vasopneumatic stimulation" is employed instead of needle acupuncture.

The vaso-pneumatic device is a complimentary, but separate procedure performed on different body parts on the same patient by the Claimant during the same visit.

As multiple procedures performed on the same patient by the same provider at the same time or during the same visit, then, the acupuncture treatment and vasopneumatic stimulation are subject to the multiple procedures reduction formula.

Here, and in keeping with the provisions of N.J.A.C. 11:3-29.4(f)(1), Claimant should be reimbursed for CPT 97780 as the primary procedure at 100% and CPT 97016 as the second procedure at 50% for dates of service October 17, 2001 through February 18, 2002.

Based on the foregoing, then, Claimant is entitled to reimbursement for acupuncture treatment rendered to MC on dates of service October 17, 2001 through February 18, 2002, calculated using a UCR fee of $95.00 for CPT 97780 and $34.00 for CPT 97016.
(disallowing any charges billed under CPT 99070) and subject to the multiple procedures reduction formula.

Respondent shall, of course, receive credit for any payments already made to Claimant. The allowable charge for each date of service is $112.00. There were thirty-one (31) dates of service from October 17, 2001 through February 18, 2002. Allowable charges for those dates of service total $3,472.00 ($112.00 x 31 = $3,472.00).

Respondent has already paid Claimant $798.53.

Claimant is entitled to reimbursement in the amount of $2,673.47 for the treatment rendered to MC from October 17, 2001 through February 18, 2002.

As determined hereinabove, Claimant is also entitled to reimbursement in the amount of $80.02 for the office visit conducted on October 17, 2001.

Claimant is, then, entitled to reimbursement in the total amount of $2,753.49.

Medical expense benefits are awarded as outlined hereinabove and set forth in Paragraph 5, below.

With respect to attorney's fees in this matter, the Certification of Services submitted by Claimant's counsel has been reviewed. Respondent's argument that the attorney's fees being sought by Claimant's counsel are excessive has been taken into consideration, as well.

As set forth in RPC 1.5, consideration has been given, but not limited to, the novelty and difficulty of the questions involved, the skill requisite to perform the legal services properly, the fees customarily charged in the locality for similar legal services, the amount involved and the results obtained, as well as the experience, reputation and ability of the lawyer performing the service.

An attorney's fee of $1,500.00 is consonant with the amount of the Award and in keeping with the guidelines of RPC 1.5.

Costs are awarded in the amount of $325.00 (AAA filing fee - $325.00).

5. MEDICAL EXPENSE BENEFITS:

<table>
<thead>
<tr>
<th>Provider</th>
<th>Amount Claimed</th>
<th>Amount Awarded</th>
<th>Payable to</th>
</tr>
</thead>
<tbody>
<tr>
<td>J W Acupuncture, P.C.</td>
<td>$3,643.72</td>
<td>$2,753.49*</td>
<td>J W Acupuncture, P.C.</td>
</tr>
</tbody>
</table>
Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

*Net 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


(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): $1,500.00

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

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

July 7, 2003
Date

James H. Garrabrandt, Esq.