

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

In the Matter of the Arbitration between

(Claimant)

v.
State Farm Ins. Co.
(Respondent)

AAA CASE NO.: 18 Z 600 13671 01
INS. CO. CLAIMS NO.: 30V086536
DRP NAME: Kathleen D. Kincade
NATURE OF DISPUTE: Accident
Related, Attorney Fees/Costs, Reasonable
and Necessary

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: G.M..

1. ORAL HEARING held on 3/3/03.
2. ALL PARTIES APPEARED at the oral hearing(s) .

ALL PARTIES appeared telephonically.

3. Claims in the Demand for Arbitration were AMENDED and permitted by the DRP 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).

The Claimant GM individually withdrew his demand for payment of the bill of Dr. Belden. Thus GM presented only the bill of Dr. Lu for payment in this matter. GM assigned his rights to payment from the Respondent to Lawrenceville Neurology on 8/28/01. The amount at issue of this provider is amended to \$4,748.23.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

GM was involved in a motor vehicle accident on 3/19/99. On that date he was insured under a policy issued by the Respondent.

GM sustained personal injuries as a result of the accident. He received medical treatment and testing from various providers.

GM was examined by a chiropractor, Dr. Dudick, on 4/17/00 at the request of the Respondent. At that time Dr. Dudick diagnosed cervical sprain and strain and found that GM did not require any further chiropractic treatment or physical therapy.

GM was also examined by a neurologist, Dr. Vester, on 6/26/00 at the request of the Respondent. Dr. Vester opined that GM did not need neurologic care and noted that GM had not complied with Dr. Klazmer's request for neurologic testing. Dr. Vester issued an addendum report of 11/21/01 in which he stated that the quantitative sensory testing was not accepted neurologic procedure. In another addendum dated 5/20/02 Dr. Vester opined that the referral to Dr. Lu was not indicated.

GM continued to treat with Dr. Lu and with Lawrenceville Neurology. Both the latter provider and GM brought this action to compel the Respondent to pay the outstanding bills of these two providers.

I have received and reviewed Mr. Gravatt's submission on behalf of Lawrenceville Neurology dated 3/26/02 with all attachments. I have received and reviewed Mr. Kaplan's submission on behalf of GM individually dated 11/8/01 with all attachments.

I have received and reviewed the Respondent's submissions of 1/24/03 and 9/16/02 with all attachments.

In Dr. Lu's report of 12/14/00 he described GM's presenting complaints of neck pain which radiated to both shoulders and into the right arm, mid-back pain, and low back pain which radiated into the sacral area. Dr. Lu noted a decreased range of motion in the low back. He diagnosed cervical and lumbar radiculitis and thoracic sprain and strain. Dr. Lu treated GM twice weekly with acupuncture from 5/6/99 through 12/7/99. At GM's discharge Dr. Lu noted that he demonstrated residuals of pain and restriction of motion. However Dr. Lu related the treatment to the accident of 3/19/99 and found that this treatment was medically reasonable, necessary and related to the accident.

I am persuaded by the weight of the credible medical evidence that the treatment and testing rendered to GM by Dr. Lu was medically reasonable, necessary and related to the accident. I find the report of the treating doctor, Dr. Lu, to be persuasive on this issue. Dr. Lu had the opportunity to treat and evaluate GM over a course of time. *Thermographic Diagnostics v. Allstate*, 125 N.J. 491 (1991). Therefore I award payment of the bill of this provider with the exception of the charge of \$200.00 for a report to counsel.

GM's treating chiropractor, Dr. Belden, referred him to Lawrenceville Neurology on 4/29/99 due to his continuing complaints of bilateral neck pain radiating into both shoulders. Dr. Klazmer diagnosed cervical radiculopathy and recommended additional testing. GM underwent electrodiagnostic testing on 5/27/99 including nerve, motor and NCV tests. GM also underwent quantitative sensory testing on 9/1/99 and an EMG on 11/21/00. In reviewing the treating neurologist's reports, I am persuaded that the evaluation, EMG and nerve studies of 5/27/99 were medically reasonable, necessary and related to the accident. I find that Dr. Vester's opinion on the quantitative sensory tests is controlling and deny payment for these studies performed on 9/1/99. I also deny payment for the charges imposed for missed appointments. I award payment for the initial consultation, tests on 5/27/99 and the EMG.

No calculation of interest on Dr. Lu's bill has been supplied by GM. In addition, no calculation of interest has been supplied by the Claimant/Provider, Lawrenceville Neurology, on the amount awarded. Therefore no interest is awarded on this claim.

I have not received an affidavit of services from Mr. Kaplan's office. I find that an hourly rate of \$200.00 is fair and reasonable in this area for this type of work by an experienced attorney. I find that counsel submitted reports from each treating physician and appeared by telephone at the hearing. I award counsel fees in the amount of \$800.00 to Mr. Kaplan's office in addition to filing costs. I have received and reviewed the affidavit of Mr. Gravatt. I find that the hourly rate of \$200.00 is fair and reasonable. However I find that the time billed of 8.45 hours is higher than necessary for this successful Claimant. In awarding counsel fees I must consider the guidelines of RPC 1.5 (a) which specifies consideration of the amount at issue and the complexity of the matter. I find that adequate compensation is five hours at the rate of \$200.00 per hour, plus filing costs.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Dr. Lu	\$6,380.00	\$6,180.00	provider
Lawrenceville Neurology	\$4,748.23	\$2,019.00	provider

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

The amounts awarded are subject to the fee schedule and any applicable co-pay and deductible amounts.

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 each to Mr. Kaplan and Mr. Gravatt

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$800.00 to Mr. Kaplan's office and \$1,000.00 to Mr. Gravatt.

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

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

April 30, 2003
Date

Kathleen D. Kincade, Esq.