

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

In the Matter of the Arbitration between

(Claimant)

v.

Hertz Claim Management Insurance
Company
(Respondent)

AAA CASE NO.: 18 Z 600 14909 02
INS. CO. CLAIMS NO.: 860104460BE

DRP NAME: Sergio G. Carro
NATURE OF DISPUTE: 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: MW.

1. ORAL HEARING held on August 6, 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 dispute arises out of a motor vehicle accident that occurred 5/18/01. It is not disputed that MW was injured in that accident. However, the primary issue presented is medical necessity for all treatment post cut-off. Secondly, if Respondent's cut-off is found to be proper, then there is the issue of the correct effective date of the cut-off.

As to medical necessity, Respondent relies on three reports all dated 12/12/01. The first is a chiropractic report from Eric Littman, DC who found normal orthopedic and neurologic testing and opined that no further chiropractic treatment was warranted.

The second report is an orthopedic evaluation prepared by Dr. Milton Smith who found completely normal range of motion in the cervical spine, lumbar spine and both knees. He, like Dr. Littman, found no need to continue treatment for MW.

The third report is a neurology report prepared by Mitchell Raps, MD. Dr. Raps, like the other examining doctors, found his examination to be essentially normal although he did note a finding of pain at 60 degrees on the right knee upon straight leg raising. Dr. Raps also found no reason to continue treatment for MW.

Claimant, on the other hand, found restricted ranges of motion in all planes. He also found a positive heel-wlak test and positive double leg raise test. Laseque (straight leg raise) was noted as positive bilaterally. Ely's test was also positive bilaterally as was Patrick's test. The treatment/progress notes provided do not reveal any significant improvement from one treatment date to the next. In essence, MW states on each visit that he feels slightly improved but every notation indicates pain 25 to 50% of the time he is awake. I find it curious that he indicates improvement each visit for the six month period of treatment involved in this demand but never comes off his estimate of pain 25 to 50% of the time he is awake. What improvement can there be if the amount of time in pain remains static for six months? Claimant argues that if these records are interpreted as demonstrating a plateau being reached, then there must be some treatment allowed at the plateau level because the plateau itself cannot be recognized until there are several dates of service without palpable improvement.

I note that although Respondent's IME reports are dated 12/12/01, the correspondence terminating benefits is dated 2/8/02 and, by its terms, is effective 2/12/02. Curiously, Respondent's representative forwarded this correspondence to MW's attorneys rather than to MW or Dr. Brown. The question then becomes on what date is the cut-off effective if Respondent is relying on MW's attorneys to deliver the news to all treating doctors.

I find that the records demonstrate at least reported functional improvement through January 2002. Thereafter, there is moderate improvement reported but without significantly varying degrees such that a plateau should have been recognized by the end of February 2002. Accordingly, I award the treatment through 2/28/02 and deny the balance of the demand. The effective cut-off date is therefore irrelevant.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Dr. Brown	\$1,930.00	\$1,190.00	Dr. Brown

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

The award represents bills from 1/2/02 through 2/28/02 and is subject to fee schedule and any payments already made by Respondent against these dates of service.

- 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): \$1,250.00

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

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

January 14, 2004
Date

Sergio G. Carro, Esq.