AWARD OF DISPUTE RESOLUTION PROFESSIONAL

1. 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: AM.

1. ORAL HEARING held on December 16, 2002.

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 an automobile accident that occurred on June 2, 2002 and is, therefore, subject to AICRA.

Injured in the accident, AM came under the care of, and received dental treatment from Claimant from June 7, 2002 through July 12, 2002.
Whether a TMJ disorder of which AM complained, and for which she received treatment, is causally related to the accident, as well as the medical necessity of the treatment administered to AM are the issues in this case.

In a report dated June 19, 2002, Robert J. Federman, D.D.S. of Claimant indicates that AM suffered a hyperflexion, hyperextension injury and struck the mandible and maxillary regions of her skull directly against the airbag of her vehicle during the happening of the June 2, 2002 accident. She experienced immediate pain in the temporomandibular joint region following the motor vehicle accident. Given the mechanics of the happening of the accident, AM's face striking the airbag, her complaints of pain in the temporomandibular joint region following the accident and after his examination of AM, Dr. Federman concluded that in all medical probability, the motor vehicle accident was the competent producing cause for all injuries to the temporomandibular joints and related masticatory musculature.

At the behest of Respondent, Gary M. Heir, D.M.D. conducted a clinical evaluation of AM on July 30, 2002. Following his review of reports and records and clinical evaluation of AM, Dr. Heir concluded that the injury to AM's temporomandibular joints was loss related.

Generally, the physician treating the patient is in a better position to express an opinion as to the cause and effect than one making an examination in order to give expert testimony. Celeste v Progressive Silk Finishing Co., 72 N.J. Super. 233 (App. Div. 1962). Where medical testimony is in conflict, greater weight ordinarily will be given to the testimony of the treating physician. Albelit v General Motors, Corp., 46 N.J. Super. 475 (App. Div. 1957).

Here, both the treating dentist and the examining dentist agree that the TMJ injury of which AM complained, and for which she was treated, is causally related to the accident.

Was the treatment medically necessary?

"Medically necessary" or "medical necessity" means that the medical treatment or diagnostic test is consistent with the clinically supported symptoms, diagnosis or indications of the injured person, and:

1. The treatment is the most appropriate level of service that is in accordance with the standards of good practice and standard professional treatment protocols including the Care Paths in the Appendix, as applicable.
2. The treatment of the injury is not primarily for the convenience of the injured person or provider; and
3. Does not include unnecessary testing or treatment.

In his report dated June 19, 2002, treating dentist, Dr. Robert J. Federman, indicates that his clinical examination of AM on June 7, 2002 revealed headaches occurring daily with pain primarily located in the temporal region of the skull; pain in the cervical, lower back
and left shoulder regions; pain bilaterally of the medial and lateral pterygoid musculature; restriction of maximum interincisal jaw opening; pain bilaterally of the temporomandibular joints and clicking bilaterally of the temporomandibular joints.

Dr. Federman diagnosed bilateral capsulitis, myositis, anterior displacement with reduction and trigger points.

His treatment plan for AM consisted of the construction and insertion of both mandibular and maxillary temporomandibular joint orthotics for AM to utilize 24 hours a day. As explained by Dr. Federman, the TMJ orthotic repositions the mandible in relation to the maxilla. At the same time, this orthotic repositions the condyle in relation to the glenoid fossa of the cranium of the temporomandibular joints, repositioning the disc of the temporomandibular joint into a more physiological position. This treatment reduces inflammation associated with capsulitis and synovitis and decreases associated muscle contracture and spasm. Treatment will also consist of limited physical therapy modalities including ultrasound and Vapo-coolant spray. It can be anticipated that treatment will occur approximately two times per month for a duration of two months and involve established extended visits where reevaluations and adjustments to the TMJ orthotics are performed.

Dr. Gary M. Heir, a dentist, conducted a clinical evaluation of AM on July 30, 2002. The evaluation, then, was conducted over two weeks after AM's last date of treatment with Claimant.

In a report dated July 30, 2002, Dr. Heir acknowledges Dr. Federman's diagnosis of temporomandibular disorder for the injury sustained by AM in the accident and that the diagnosis was made on June 7, 2002. He then indicates that it is not possible, in many cases, to make a definitive diagnosis within such a short period of time after the accident. This is due to the fact that in any traumatic injury there is a certain amount of self limiting, post traumatic symptomology. This may be true in this case as the claimant was examined and treatment was instituted with no clear symptoms of a temporomandibular disorder other than referred pain from the left shoulder. AM did report clicking, but it was not reported as painful. Therefore the need to institute immediate treatment is questionable and the claimant's favorable response in only three treatment visits suggests that this may in fact have been symptoms of a transient and self limiting injury. Usually, unless acute symptoms are present, i.e., dislocation, fracture, etc., a period of a few days or weeks should pass to allow these symptoms time to resolve, and only palliative therapy would be indicated.

None of those opinions regarding the nature and extent of the injury to AM's temporomandibular joints, or the adverse inference Dr. Heir draws from the success of the treatment administered to her, are expressed in terms of medical probability. Those opinions, as well as the inference of there being a transient and self limiting injury, then, are speculative in nature.
Dr. Heir concludes that it is clear that this claimant incurred blunt trauma and incurred soft tissue trauma. However, the injuries appear to have been minor and self-limiting or at least responded with only three treatment appointments to adjust intraoral appliances and provide ultrasound. He finds that no additional treatment is necessary, the MRI was not indicated, the need for ultrasound was not established and the need for two appliances was not supported.

In his report, though, Dr. Heir does mention that "[a] palpatory examination of the temporomandibular joints was slightly tender on the left. A palpatory examination of the masticatory and cervical musculature was relatively with normal limits, with only minor findings of tenderness of the left." Dr. Heir also states that "[a]t a maximum opening a click occurred in the left joint at approximately 40mm." Dr. Heir states that the "MRI reports diagnosed a right non-reducing anterior disc displacement and a left reducing anterior disc displacement." He also determined that the injury to AM was loss related and that "[i]t is clear that this claimant incurred blunt trauma and incurred soft tissue trauma." He also acknowledges the success of the treatment administered to AM.

In keeping with the principles espoused by the Court in the Celeste and Albelit cases, supra., greater weight has been given to the report and opinions expressed by the treating dentist than to those of the examining dentist regarding the medical necessity of the dental treatment rendered to AM from June 7, 2002 through July 12, 2002.

By virtue of the clinical findings made, the explanation for the treatment plan devised and opinions expressed by Dr. Federman, together with the positive findings made by Dr. Heir during his examination of AM, and concessions contained in Dr. Heir's report, Claimant has established the medical necessity of the dental treatment rendered to AM.

Claimant is, therefore, entitled to reimbursement in the amount of $3,070.00 for dates of service June 7, 2002 through July 12, 2002, subject to the prevailing medical fee schedule and any applicable deductible and co-payment.

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 $1,100.00 is consonant with the amount of the Award and in keeping with the other guidelines of RPC 1.5.

Costs are awarded in the amount of $325.00.
5. MEDICAL EXPENSE BENEFITS:

Awarded

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<th>Provider</th>
<th>Amount Claimed</th>
<th>Amount Awarded</th>
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<td>$3,070.00*</td>
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Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

*Subject to the prevailing medical fee schedule and any applicable deductible and co-payment.

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): $1,100.00

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

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

February 25, 2003
Date

James H. Garrabrandt, Esq.