

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

In the Matter of the Arbitration between

(Claimant)

v.
Amica Mutual Ins.

(Respondent)

**AAA CASE NO.: 18 Z 600 16371 01
INS. CO. CLAIMS NO.: L4300001870
DRP NAME: Richard A. De Michele
Michael F. Carnevale II, and
Nora J. Brodow
NATURE OF DISPUTE: Medical
Expense Benefits**

DISPOSITION OF APPLICATION FOR APPEAL OF AWARD

WE, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONALS (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.*, having been duly sworn, and the attorney for Claimant having requested an appeal of the Award, and the attorney for Respondent having submitted a response to same, and after having reviewed and considered the proofs and allegations of the parties, do hereby **DETERMINE** as follows:

Injured Person(s) hereinafter referred to as: FD & SD.

- 1. The request for review is hereby **GRANTED** for reasons set forth below and the award reviewed is **AFFIRMED** in its entirety.
- 2. The request for review is **GRANTED** for reasons set forth below and the award is **VACATED** in its entirety.

The case is remanded for a new hearing before.
- 3. The request for review is **GRANTED** for reasons set forth below and the award is **PARTIALLY** vacated.

The case is remanded for a new hearing before.

Findings, Conclusions and Basis Therefore:

Having reviewed the submissions of Claimant and Respondent, we find the award rendered by the DRP was not incorrect as a matter of law. AAA Rule provides that an award rendered by a DRP may be vacated or modified by appeal to a DRP panel if the award was incorrect as a matter of law.

Procedural History

Plaintiff's Demand for Arbitration was filed on December 14, 2001. A hearing was scheduled for May 23, 2002. Respondent submitted an Arbitration Statement on the date of the hearing along with an MRO package. The DRP held the record open until July 24, 2002 to allow further submissions by Claimant's including a reply to Respondent's Arbitration Statement. Claimants were also granted until July 25, 2002 to respond to the MRO request. On July 15, 2002 Claimants received the MRO report and requested an additional oral hearing to present the testimony of Claimant's doctors to rebut the findings of the MRO. A second request for another hearing was made on July 17, 2002. On July 24, 2002 Claimant submitted a reply to Respondent's Arbitration Statement. On July 25, 2002, Claimant's filed a response to the MRO report.

Claimant's appeal is based on several arguments. Claimant's alleged that the actions of the DRP in this matter showed biased and abuse of discretion so as to render the award unjust and an invalid as a matter of law.

The argument is made that the DRP permitted Respondent to submit its arbitration statement on the date of the hearing arguing that permitting these documents to be submitted afforded the Respondent an unfair technical advantage. As for petitioners argument that Respondent's arbitration submission was untimely, we find that Rule 17 clearly points out that it is within the sole discretion of the DRP to decide whether to accept or reject documents submitted at the hearing. Clearly, no error of law was made by the DRP in choosing to accept documents submitted at the hearing.

Claimant also argues had they known of the MRO request prior to the hearing they would have made arrangements to have their doctors testify at the original hearing on May 23, 2002. The argument is made that failure to permit the doctors to testify was a violation of Rule 14, that the doctors were interested parties. The argument made is that the cumulative effect of the DRP's determination resulted in a substantial prejudicial violation of Rule 19. It is to be noted that the DRP also provided Claimant's counsel two months to respond to Respondent's submission and rule that the Respondent would not be able to submit anything further relative to the merits of the case. We find that no error of law was committed.

Addressing the disallowance of further expert testimony Respondent points out that petitioner made no such request until after the MRO reviewer rendered his opinion and that Claimant was afforded two months after the initial hearing to have their experts address Respondent's submissions and expert reports. We find that petitioners experts were not only able to provide numerous reports addressing Respondent's initial arbitration submission and proofs but also were able to have the MRO review addressed as well.

The legal argument is also made that the DRP had a direct financial state in not permitting Claimants an additional oral hearing to present the testimony of their doctors which created a conflict of interest. Claimant incorrectly states that the compensation of a DRP is limited to \$350.00 per case and as such the DRP had a financial interest in spending as little time as possible on each case. Claimant concludes that the financial interest of the DRP created a clear conflict of interest between the DRP's duty to conduct a full and fair hearing and to conduct business profitably. We find no basis for the argument. DRP's are independent contractors and are not paid on a case by case basis as counsel indicate.

The argument is that the award rendered by the DRP is so deficient in its failure to set forth the basis for the basis for the DRP's findings of facts and conclusions of law that the award is invalid and deficient as a matter of law. We find that there is no basis for the allegation that the DRP willfully failed to review all of Claimant's submissions and find support for the argument that if Claimant was confused by the findings of facts, Claimant had the option of requesting a clarification or modification of the award, which was not done.

Addressing the allowance of an MRO a review Rule 21 clearly indicates that either party or the DRP can request an MRO hearing. The rule does not limit when such request can be made and we find that the DRP committed no error of law and showed no bias towards Respondent in allowing the MRO review to go forward and was exercising his discretion in doing so.

Rule 19 clearly notes that the DRP has the discretion to vary procedure relative to the submission of proofs and evidence.

The argument is made that the award of attorney fees to Claimant's attorney was arbitrary and in total disregard to the factors set forth in the New Jersey Supreme Court Rules of Professional Conduct and Rule 30. In reference to attorney fees, AAA rules clearly state that any award of attorney fees is in the sole discretion of the Arbitrator, we note that the DRP in awarding counsel fee indicating I am making this rule in consonant with the bills awarded in this matter as well as the factors set forth in 1.5 of the Rules of Professional Conduct.

DRP DISSENTS for reasons set forth below:

COSTS AND FEES

- 1A. The shall pay the attorney's fees in the amount of _____ as related solely to this Appeal.
- 1B. No attorney's fees are awarded as related solely to the Appeal.
- 2A. The Appellee shall pay the Appellant the costs incurred for this appeal in the amount of \$1,050.00.
- 2B. No costs are awarded as related solely to this Appeal.

This Award is in **FULL SATISFACTION** of the APPEAL submitted to this arbitration panel.

February4, 2003
Date

Richard A. De Michele, Esq.

February 4, 2003

Date

Nora J. Brodow, Esq.

February 4, 2003

Date

Michael F. Carnavale, II