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: ED.

1. ORAL HEARING held on July 1, 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 April 7, 2002 and is, therefore, subject to AICRA.

Claimant seeks reimbursement in the amount of $1,535.00 for date of service April 16, 2002 and itemized as follows: CPT 99245 - $250.00; CPT D0330 - $75.00; CPT 21110 - $1,200.00 and CPT 99070 - $10.00.
Claimant requested pre-certification of an orthotic appliance and follow-up visits; but, received no response from Respondent. Five months later, and by way of letter dated September 12, 2002, Respondent denied payment for date of service April 16, 2002 because an investigation as to coverage eligibility was still pending.

Eligibility has not been raised as an issue in this case and, in fact, Respondent notes that ED is arguably entitled to Personal Injury Protection benefits pursuant to a policy of insurance issued by it to the owner of the vehicle which he was driving at the time of the April 7, 2002 accident. There is no evidence to suggest otherwise.

Relying upon a peer review report dated April 26, 2002 and rendered by Joel M. Doner, D.D.S., Respondent questions the medical necessity of the TMJ splint (CPT 21110).

Dr. Doner reviewed a one page medical record, which he states was somewhat illegible and unable to be interpreted. Based on his review of that record, then, Dr. Doner recommended approval for the panorex x-ray (CPT D0330), only. He then recommended that a request should be made from the clinician as to the necessity for an MRI and TMJ splint (CPT 21110) at this time. From the doctor's notes, opines Dr. Doner, it appears that the patient has a myofacial pain dysfunction syndrome and not an internal derangement of the temporomandibular joints. This condition often responds favorably to physical therapy, and inflammatories and soft diet.

Respondent did not request an explanation of medical necessity of the TMJ splint from Claimant.

As reflected in a report dated January 13, 2003 and rendered by Dr. Stuart Katz, Claimant herein, and treatment notes attached thereto, MRI's of the left and right TMJ were obtained on April 17, 2002 and revealed anterior subluxation articular disc in closed mouth position, recaptured during opening - left TMJ; and as to the right TMJ - anterior subluxation articular disc in closed mouth position, recaptured during opening and tear articular disc.

Based upon ED's subjective complaints of jaw pain, objective findings of tenderness of jaw on palpation and restricted opening of the mouth, together with the MRI findings, Claimant assessed ED's condition as anterior TMJ disc displacement, TMJ pain dysfunction syndrome and headache (facial pain).

Conservative treatment, including the use of a TMJ orthotic appliance was recommended for ED and he was fitted for the appliance on April 16, 2002.

Greater weight has been given to the records submitted and opinions expressed by the treating dental surgeon, Dr. Katz, than to the report and opinion of the peer review dental surgeon, Dr. Doner.
Through his submissions, then, Claimant has established the medical necessity of the treatment rendered to ED on April 16, 2002 and the TMJ orthotic appliance prescribed for him.

Claimant has also produced evidence showing that the TMJ orthotic appliance was actually fabricated; but, because ED never returned to Claimant for treatment, not applied to his mouth.

Claimant seeks reimbursement of the TMJ orthotic appliance in the amount of $1,200.00 under CPT 21110. Respondent acknowledges that the UCR charge for CPT 21110 is $1,200.00; but contends that the TMJ orthotic appliance prescribed for ED is best described and properly billed at $714.00 under CPT D7880.

A referral to Medicode's 2000 "Coder's Desk Reference" provides the following lay description of CPT 21110:

The physician applies interdental fixation (wires the jaws together). Arch bars, ivy loops or other wires are attached to the teeth then wired together. For endentulous (without teeth), or partially edentulous patients, dentures or splints may be wired to the jaws and then wired together to provide intermaxillary fixation. Orthodontic appliances may also be used.

The above definition is an expansion of the American Medical Association's definition, which reads as follows:

Application of interdental fixation for conditions other than fracture or dislocation, includes removal.

In the absence of surgery, or the literal wiring of the jaws together, or the use of wiring to affix the appliance in the mouth, CPT 21110 is not the type of TMJ orthotic device that was prescribed for ED. Nor is it appropriate to bill under CPT 21110 for an orthotic device which is designed for the patient to insert and remove it himself.

Per the current Dental Terminology 2000 Guide, D7880 is defined as "Occlusal orthotic device, by report. Presently includes splints provided for treatment of temporomandibular joint dysfunction."

The TMJ orthotic appliance fabricated for ED is more similar to CPT D7880 (Occlusal Orthotic Device), than to CPT 21110 and, therefore, should be reimbursed at $714.00 under CPT D7880.

Under UCR charges, or when a CPT is listed in it, the prevailing medical fee schedule, Claimant is entitled to reimbursement for date of service April 16, 2002, as follows:

CPT 99245 - $213.00
CPT 70355 - $ 75.00
CPT D7880 - $714.00
CPT 99071 - $ 10.00

Total reimbursement for date of service April 16, 2002 equals $1,012.00.

Medical expense benefits are awarded in the amount of $1,012.00, subject to any applicable deductible and co-payment.

Interest is awarded in the amount of $91.08.

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 $1,200.00 is consonant with the Amount Awarded and in keeping with the other guidelines of RPC 1.5.

Costs are awarded in the amount of $325.00.

5. MEDICAL EXPENSE BENEFITS:

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<th>Amount Claimed</th>
<th>Amount Awarded</th>
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<td>Stuart Katz, DMD</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 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): $1,200.00

   (C) INTEREST is as follows: Awarded in the amount of $91.08

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

September 4, 2003
Date

James H. Garrabrandt, Esq.