AMERICAN ARBITRATION ASSOCIATION NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v

Allstate Insurance Company (Respondent)

AAA CASE NO.: 18 Z 600 19873-02 INS. CO. CLAIMS NO.: 1873619000 DRP NAME: Richard A. De Michele NATURE OF DISPUTE: Medical

Expense Benefits

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: LC.

- 1. ORAL HEARING held on May 13, 2003.
- 2. ALL PARTIES APPEARED at the oral hearing(s).

Respondent 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).

Amendments

LC(Center for Aquatic Rehab) \$225.00 South Jersey Radiology \$1,075.00 Health South Pennsauken\$1,775.00 Delaware Valley Primary Care \$100.00 paid Income Continuation \$\$1,700.00

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

LC was involved in a motor vehicle accident on July 28, 2000. Based on the date of the accident AICRA will be considered as applicable.

Subsequent to the accident LC was seen at Cooper Hospital where she was examined and given anti-inflammatory medication and discharged. At the time she complained of neck and back pain.

On August 1, 2000 she was seen by Dr. Kessler at Delaware Valley Primary Care with complaints of cervical and lumbar spine pain. Diagnosis was acute post-traumatic cervical and lumbosacral strain and sprain. A treatment plan of physical therapy with modalities was started on August 1, 2000 and ended November 21, 2000. X-rays were completed at South Jersey Radiology which reported moderate joint space narrowing at C5-C6, interest space compatible with degenerative arthritis. X-rays of the lumbar spine were reported as normal.

In a report dated April 5, 2001 Dr. Kessler indicated that LC was improved but still symptomatic regarding injuries sustained in the motor vehicle accident of July 28, 2000. He also commented that in reviewing her past medical record she had an aggravation with significant objective medical findings especially on an MRI scans showing multi-level disc herniation which were not present on a previous C-T scan of May 6, 1996. He also concluded by saying that she had to restrict activities significantly.

LC was referred for an orthopedic consultation with Dr. Barry S. Glimer at Regional Orthopedics. Dr. Glimer's initial assessment was cervical disc herniation and bulging discs at C4-C5 through C6-C7 and bulging at C3-C4.

LC came under the care of Dr. Lawrence S. Deutsch as a referral from Dr. Abiuso, LC's primary care physician. Dr. Deutsch reported that LC had received physical therapy for her neck and back for approximately eight months during which time her back improved but her neck was somewhat sore but reported as livable. Since completing therapy her low back again began to pain her and become more of a problem as did her neck. History taken by Dr. Deutsch indicated that LC had missed several days of work. Dr. Deutsch's initial diagnosis was degenerative disc disease, post-traumatic in the cervical and lumbar spine with herniation at several levels in both the cervical and lumbar spine. He recommended continued conservative care in particular physical therapy for her neck including cervical traction. Continued physical therapy was also recommended to strengthen the low back. Various durable medical equipment was prescribed.

LC was also treated at The Rothman Institute under the care of Todd J. Albert MD. He treated her for herniated nucleus pupolsus at C4-5 and C5-6 with cervical stenosis and axial neck pain, early myelopathic findings and lumbar degenerative disc disease. Dr. Albert noted in correspondence that LC reported a history of approximately two years of back pain following a motor vehicle accident. He also reported that it was medically necessary that she continue her exercise regiment at a gym in order to continue her strengthening and work hardening program. Dr. Albert's assessment was herniated disc C4-5 and C5-6; cervical stenosis, axial neck pain, positive borderline myelopathy and lumbar degenerative disease. LC was instructed to follow up with her primary care physician Dr. Abiuso.

On June 13, 2002 LC was referred to Aquatic Rehabilitation by Dr. Abiuso for aquatic physical therapy and therapeutic exercises.

Several issues are raised by respondent. Addressing the billing by The Center for Aquatic Rehabilitation respondent points out that there is no pre-certification for treatment and that a 50% copayment penalty was applicable. Respondent also relies on a peer review by Dr. Plunkett who indicated that there was no evidence to support the indication or need for the treatment provided by The Center for Aquatic Rehabilitation or that it was a result of the July 28, 2000 motor vehicle accident.

There was no IME conducted by respondent. Medical evidence offered by respondents was in the form of a peer review by Dr. Plunkett. Having heard the argument of counsel and having reviewed the submitted documentation I find that the claimant has met her burden of proof and that treatment provided by the various medical providers was medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980) and Mewes v. Union Building and Construction Company, 45 N.J. Super. 89 (App. Div. 1957).

In reference to the claim of The Center for Aquatic Rehabilitation I find that there is adequate documentation and referencing to Dr. Abiuso by the various medical providers to establish the medical necessity for the treatment by aquatic rehabilitation. In it is to be noted that LC appeared at the hearing and testified in detail in reference to her physical condition and the treatment rendered by the various medical providers to establish the medical necessity for the aqua therapy treatment rendered.

Addressing the pre-certification for the treatment claimant argues that a bill was sent to respondent on or about May 21, 2002 which would meet the pre-certification requirements. I find that the claimant has not submitted adequate documentation to establish that a pre-certification request was in fact made by claimant. It is noted that there is no medical documentation presented with the billing.

In reference to the actual billing by The Center for Aquatic Rehabilitation in the amount \$4,080.00 respondent's position is that the CPT codes billed by the center are subject to the \$90.00 daily maximum cap pursuant to NJAC 11; 3-29.4 (m) and as such the center would be entitled to \$1,980.00 which is subject to a pre-certification penalty of 50% reducing the amount payable to \$990.00. I find that the \$990.00 is payable in support of AETNA US HealthCare's lien.

Addressing the claim of Health South-Pennsauken claimant has agreed that there has been no proof that the treatment was pre-certified and accordingly the 50% penalty applies. The claimant is to resubmit the bills to respondent with appropriate CPT codes to be paid subject to the 50% penalty for lack of pre-certification.

Addressing the billing by South Jersey Radiology claimant has submitted no proof to establish that there was in fact a request for pre-certification for the MRI or the cervical spine conducted on May 5, 2002. Accordingly I find that the 50% pre-certification penalty is applicable.

Having heard the argument of counsel and having reviewed the submitted documentation, I find claimant has met her burden of proof in reference to income continuation benefits. Of significance is the reporting of the Rothman Institute and Dr. Abruso's finding of disability as indicated by his correspondence with LC's employer.

5. MEDICAL EXPENSE BENEFITS:

Amount Claimed

Awarded

Provider

Center for Aquatic	\$4,080.00	\$990.00	Center for Aquatic
Rehabilitation			Rehabilitation
LC(Center for	\$225.00	\$225.00	LC
Aquatic			
Rehabilitation)			
Health South	\$1,775.00	\$887.50	LC
Pennsauken			
Delaware Valley	\$100.00	\$91.24	Delaware Valley
Primary Care			Primary Care
South Jersey	\$1,075.00	\$537.50	South Jersey
Radiology			Radiology

Amount Awarded Payable to

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

- 6. INCOME CONTINUATION BENEFITS: Claimed and Awarded \$1,700.00
- 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): \$3,000.00
- (C) INTEREST is as follows: Awarded in the amount of \$0.00. Claimant did no submit documentation to support an award of interest. Interest is not awarded.

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

July 11, 2003	
Date	Richard A. De Michele, Esq.