

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

In the Matter of the Arbitration between

(Claimant)

v.

STATE FARM INDEMNITY COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 02404 03
INS. CO. CLAIMS NO.: 30V260845
DRP NAME: Kate Rabassa Wallen
NATURE OF DISPUTE: Causation,
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: claimant.

1. ORAL HEARING held on 9/17/03.
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:

Claimant was involved in a motor vehicle accident on 9/4/00. The issues in the case are: (1) whether surgery performed in May, 2002 is accident-related and (2) whether acupuncture was medically necessary and accident-related.

An MRO was submitted. Dr. Scott Shepherd outlined the claimant's medical history including five prior low back surgeries. He indicated that the motor vehicle accident aggravated an underlying condition which was chronic in nature but it was impossible to determine how much of an exacerbation the motor vehicle accident caused. He also

indicated that he found no indication for the patient's surgery because the continued pain following the motor vehicle accident was of a generalized nature without a neurogenic claudication symptom complex with the MRI of 2/12/01 demonstrating moderate stenosis at L3-4 and mild stenosis at L2-3. He states that the surgery was performed to lyse scar and the radiologic studies do not indicate any area of severe stenosis that would require surgery.

Dr. Douglas Hershkowitz, the neurosurgeon who performed the surgery testified by telephone and indicated that he performed surgery on the claimant on 8/2/00 prior to the accident. At that time, he would have addressed any herniated disc at L3-4. Subsequent to the 9/4/00 accident, there was a herniated disc at L3-4, so he opined that this was from the car accident. However, he also testified that the surgery at issue in this case performed in May of 2002 was to remove bone and ligaments pressing on the nerve roots from the level of the fusion at L4 and up. The herniated disc was not as much of an issue at that point. In fact, Dr. Hershkowitz's records indicate that the claimant, as of 9/4/01, had back pain which was not as severe, was taking Alleve and Vicodin, and having acupuncture. By 12/4/01, she indicated she started having left groin and bilateral calf pain about three weeks prior with no precipitating event and described the pain as similar to the pain she had before the August 2000 surgery but not as bad. The complaints of left groin and bilateral calf pain continue in the notes of 2/21/02 and 4/11/02, with complaints of numbness and weakness in the left foot. The surgery was performed in May.

Based on the foregoing, although I find Dr. Hershkowitz's testimony persuasive on the issue of medical necessity for the surgery which addressed the spinal stenosis and did not just lyse scars as Dr. Sheppard indicated, I do not find that he has overcome the MRO opinion that it is impossible to determine how much of an exacerbation the motor vehicle accident caused. If anything, the accident caused a herniated disc at L3-4 but the surgery, by Dr. Hershkowitz's own testimony, was not to address that, but to address stenosis. Taking the new onset complaints of pain in the left groin and bilateral calf in the latter part of 2001 up to the time the surgery was performed, I do not find that claimant has sustained her burden of proof with respect to the surgery.

With respect to the acupuncture, Dr. Sheppard stated that the treatment appeared to be indicated and causally related to the patient's motor vehicle accident. He indicates that the length of treatment by the acupuncturist appears to be somewhat excessive but then states that the treatment appears to follow the appropriate care paths. Based on this finding, I find that the acupuncture treatment provided by Justin L. Bean was medically necessary and accident related and award the amounts claimed.

With respect to attorney fees and costs, I have reviewed claimant's fee certification and considered respondent's comments. I find that an attorney fee of \$2,000.00 is consonant with the award and with RPC 1.5. I note that claimant billed nothing less than a .2 and that the hearing length was an estimate. The filing fee of \$325.00 is awarded as a cost as well as certified mailing of the demand in the amount of \$10.22. Interest is deemed waived by claimant.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Shore Memorial Hospital	\$12,048.50	\$0.00	N/A
Dr. Delasotta/Dr. Hershkowitz	\$13,917.60	\$0.00	N/A
Advanced Anesthesia	\$1,980.00	\$0.00	N/A
Shore Imaging	\$391.00	\$0.00	N/A
Justin L. Bean	\$9,300.00	\$9,300.00	Provider

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

Amount awarded is subject to reduction based on application of the medical fee schedule as calculated by respondent.

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): \$335.22

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$2,000.00

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

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

9/18/03

Date

Kate Rabassa Wallen, Esq.