

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

In the Matter of the Arbitration between

(Claimant)

v.
New Jersey Manufacturers
(Respondent)

AAA CASE NO.: 18 Z 600 01289 01
INS. CO. CLAIMS NO.: 1999 583675
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: KK.

1. ORAL HEARING held on July 17, 2001.
2. ALL PARTIES APPEARED at the oral hearing(s) .

Claimant 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:

KK was involved in a motor vehicle accident on August 5, 1999. Insurance coverage was effective November 1, 1998. Accordingly, AICRA is applicable.

On April 25, 2000 KK came under the care of Dr. Larry A. Sabel of the Sabel Chiropractic Offices. As part of the medical history taken KK indicated she became aware of her injuries hours after the accident and went to the Emergency Room of Burlington Memorial Hospital where she was treated, prescribed medication and released. On April 25, 2000, KK's major complaints included neck and back pain as well as

headaches. She stated she had difficulty with her right hand dropping things and was not able to wear high heels on her right foot. She reported to Dr. Sabel, that pain made it difficult for her turn her neck when driving and stated she was having periods of dizziness. She also reported lower back pain when sitting.

Physical examination by Dr. Sabel revealed cervical motion restrictions, dorso-lumbar restriction and positive straight leg raising. Muscle spasm was noted in the cervical thoracic and lumbar spine. Muscle test of the upper and lower extremity were positive.

X-rays taken in Dr. Sabel's office on April 25, 2000, were read by radiologist Maurice Shmueli, M.D., who found "osteoarthric changes and upper hyperlordosis identified". Initial diagnosis was acute post-traumatic cervical, thoracic and lumbar sacral sprain/strain; brachial neuritis/radiculitis; lumbar neuritis/radiculitis; sublexation, cervical and lumbar spine.

KK was started on a program of chiropractic adjustment/manual manipulations of the cervical thoracic and lumbar spine with physical therapy in the form of traction, massage therapy and trigger point therapy.

In his initial report Dr. Sabel addressed the delay in chiropractic treatment. It was his opinion that it was not unusual for there to be a delay in initiating chiropractic treatment as occurred in KK's case. In support of this opinion Dr. Sabel quoted extensively from an article in the Journal of Clinical Chiropractic entitled "The Healing of Damaged Soft Tissue" authored by a Dr. Murphy.

KK was referred for a neurological consultation with a Dr. Abrahms. Nerve conduction studies on the lower extremities indicated S1 nerve root involvement. A lower extremity EMG study showed evidence of a right S1 radiculopathy.

An orthopedic examination was conducted by Dr. Gleimer who made a clinical assessment of post-traumatic cervical and lumbar strain and sprain; myositis, trapezius muscles; right carpal tunnel syndrome; clinical lumbar disc herniation with radiculopathy; clinical cervical radiculopathy/radiculitis-rule out cervical disc herniation."

A chiropractic IME was conducted by Dr. Mark A. Dudick, D.C., on May 9, 2000. Dr. Dudick indicated in his report dated May 11, 2000 that there was no need for further supportive physical therapy and/or chiropractic treatment and any additional evaluation of the Claimant as it relates to the August 5, 1999, accident. In his report, Dr. Dudick noted spasm and vertebral tenderness in the cervical spine. He found full range of motion in the thoracolumbar spine and full range of motion in the upper and lower extremities. A neurological examination was negative. Based on a review of X-rays taken at Memorial Hospital of Burlington County Dr. Dudick made the diagnosis of degenerative disc disease of the cervical, thoracic and lumbar spine causing the occasional right hand and right left radiculopathy with concurrent headaches.

Dr. Dudick concluded that three to four months is generally sufficient time and treatment for the resolution of strains and sprains with radiculopathy and concurrent headaches and any inflammation associated with pre-existing degenerative disc disease.

By letter dated June 1, 2000, Dr. Sabel responded to Dr. Dudick's report stating objective clinical examinations performed on the above-captioned patient approximate to the date of Dr. Dudick's examination showed positive objective clinical medical examination test findings which objectively verify the diagnosis which includes chiropractic vertebral subflexation, complex of the cervical and lumbar and also reasonably and objectively verifies its causal relationship to the accident of August 5, 1999 and therefore, the medical/chiropractic necessity of continued chiropractic treatment. Dr. Sabel stated " I am not treating KK for a sprain/strain, I am treating her for chiropractic vertebral subflexation complex of her spine. In his reply Dr. Sabel again referred to various authorities in the chiropractic profession and an article by Daniel J. Murphy, D.C. entitled "The Healing of Damaged Soft Tissue".

Dr. Dudick replied to Dr. Sabel's rebuttal letter pointing out that there were no positive chiropractic, orthopedic and/or neurological objective clinical findings at the time of his independent chiropractic evaluation that demonstrated a causal relationship to KK's motor vehicle accident. He indicated there were no palpable vertebral subflexations demonstrated in the cervical and/or lumbar spine. Dr. Dudick went on to state that although his May 11, 2000, report stated that there was spasm in the cervical spine a review of his worksheet demonstrated that this was a typo and it should have read there is no spasm noted. Dr. Dudick indicates in his reply that the chiropractic articles referenced by Dr. Sabel are not relevant since Dr. Sabel indicated he is treating KK for chiropractic vertebral subflexation complex of the spine. Dr. Dudick referenced to the text of Boyd Ceuriarx and Willis who are not in agreement with the views of Dr. Sabel. Dr. Dudick concludes in his reply that he did not palpate vertebral subflexations at the time of his examination and that vertebral subflexation found nine months after the motor vehicle accident were most likely due to KK working in a warehouse than due to her motor vehicle accident.

Respondent indicates that an orthopedic IME was conducted December 21, 1999, and a neurologic IME on December 20, 1999.

Based on my review of the various reports submitted and the extensive and detailed reporting of Dr. Sabel on his treatment of KK and having heard legal argument of counsel, I find that claimant has met its burden of proof and that the chiropractic care rendered by Dr. Sabel was medically necessary and reasonable. *Miltner v. Safeco Insurance Company*, 175 N.J. Super 156 (Law Div. 1980). Where there is a conflict in the testimony of medical experts, our courts will ordinarily give greater weight to the testimony of the treating physicians. *Meves v. Union Building and Construction Company*, 45 N.J. Super 89 (App. Div. 1957).

Respondent raises the additional argument that KK failed to report for two sworn statements and breached her insurance contract. No evidence or documentation has been submitted in support of this argument and accordingly, I find Respondent has not met its burden of proof in that regard.

Pursuant to Rule 29, I am awarding the sum of \$1,155.00 as attorney’s fees. This award is consonant with the amount in issue and with Rule 1.5 of the rules of Professional

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
Dr. Sabel	\$4,880.00	\$4,880.00	Dr. Sabel

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

Award is subject to medical fee schedule deductibles and co-payments where applicable.

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): \$325.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,155.00

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

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

August 31, 2001
Date

Richard A. De Michele, Esq.