

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

In the Matter of the Arbitration between

(Claimant)

v.
Selective Insurance Company
(Respondent)

AAA CASE NO.: 18 Z 600 01641 03
INS. CO. CLAIMS NO.: 017868239712
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: JB, EHB.

1. ORAL HEARING held on October 15, 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:

On December 25, 2000, EHB and JB were involved in a motor vehicle accident. Insurance coverage in effect at the time was for the period April 9, 2000 to April 9, 2001. Accordingly, AICRA is applicable.

JB

On the day of the accident, JB received emergency care at Cooper Hospital. Her chief complaint was pain in the arm and head. She was examined, provided with medication and discharged. On January 16, 2001, she came under the care of Dr. Harvey Benn, who treated her from January 16, 2001 to June 6,

2002. When initially seen, JB complained of pain to her head, jaw, back, shoulders and right elbow. Dr. Benn's impression was acute cervical, thoracic and lumbosacral spine strain and sprain and temporomandibular joint dysfunction together with contused shoulders and right elbow. JB started on intensive physiotherapy. A variety of studies and consultations were ordered by Dr. Benn. MRI's of the TMJ's completed at Pennsauken MRI were read as normal. X-rays revealed no fractures or dislocations. JB was seen in consultation by Dr. Ira Adler, a TMJ specialist. JB was also seen in consultation by Dr. John Yulo, a physiatrist who confirmed Dr. Benn's diagnoses. An MRI of the lumbar spine revealed a left paramedian to left lateral recess subligamentous herniation at L4-5. At the time of JB's discharge, Dr. Benn was of the opinion that her symptomology constituted a permanent loss of bodily function. Dr. Benn was of the opinion that JB had received maximum benefits from the therapy administered at his office.

An orthopedic IME was conducted by Dr. William Iannacone on August 30, 2001. At the time, Dr. Iannacone reported that JB indicated her cervical pain was nearly completely resolved and that she had no further pain in her elbows. She did indicate she got occasional headaches but continues to experience lumbosacral type pain on a daily basis. Dr. Iannacone found that JB had full range of motion of both upper and lower extremities including shoulders, elbows, forearms, wrists, hands, knees, head and ankles. He found that his neurological examination was within normal limits. He found that there was no muscle spasm and no tenderness in the midline of the cervical, thoracic or lumbosacral spine. It was his opinion that any further physical therapy or chiropractic manipulation would not be of any therapeutic benefit. He found no objective findings to support his objective complaints. His working diagnosis was chronic, lumbosacral strain, status post motor vehicle accident. Orthopedic benefits were terminated on September 30, 2001. Having heard the argument of counsel and having reviewed the submitted documentation, I find claimant has not met her burden of proof and that treatment rendered by Dr. Benn post cut-off was not medically necessary or reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

In reference to pre cut-off billing, respondent argues that Dr. Benn was appropriately paid in accordance with the multiple procedure reduction formula and N.J.A.C. 11:3-29.4(m). Claimant has the burden of proof and has not offered any evidence that the billing was not processed correctly and has not met her burden of proof. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

On January 16, 2002, JB was also seen by Dr. Frank Getson at the Camden County Chiropractic Center, where she treated until September 19, 2001. Based on a cervical, thoracic and lumbar examination, Dr. Getson's diagnosis was myalgia, bilateral, cervical, thoracic, lumbar, and lumbosacral strain and sprain. JB was started on a course of chiropractic treatment and rehabilitative therapy for her injuries. JB continued to treat with Dr. Getson from January 16, 2001 through September 19, 2001. There was no termination of benefits by respondent. Respondent argues that Dr. Getson was appropriately paid in accordance with the multiple procedure reduction formula and N.J.A.C. 11:3-29.4(m). Claimant had the burden of proof that the billing was not processed correctly and has not met that burden. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

JB was seen by Ira J. Adler, D.D.S. At the time of Dr. Adler's examination, JB was experiencing headaches and neck aches on the right and left side. She had difficulty opening her mouth on the left and right sides and right preauricular temporal as well as facial pain. Dr. Adler's diagnosis was traumatically induced arthropathy of the left and right temporomandibular joints, pain and spasm of the stomatognathic musculature. Dr. Adler's treatment plan included construction of a mandibular orthopedic repositioning appliance, moist heat therapy, myofunctional therapy, and physical therapy, both intra and extra oral.

JB was also seen by Dr. Ronald L. Brody on October 11, 2001. Dr. Brody is a physical medicine and rehabilitation physician. Dr. Brody recommended an EMG and NCV test of her bilateral lower extremities. He recommended an outpatient therapy program for her neck and low back area with use of passive modalities for pain control, therapeutic massage, myofascial release program and an active exercise program for the neck and low back area. In addition, chiropractic care was recommended. Use of a home TENS unit as well as a lumbosacral support brace was also recommended.

Respondent denied payment of benefits relying on the pre-certification of Alta. Respondent's position is not supported by a peer review or IME.

Having heard the argument and having reviewed the submitted documentation, I find that claimant has met her burden of proof and that the care and treatment rendered by Ira J. Adler, D.D.S., Cooper Hospital and Pennsauken MRI were medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

EHB

On the date of the accident, EHB was seen at the Emergency Room of Cooper Hospital in Camden, New Jersey. His chief complaint was neck/arm pain. He was examined, given medication and discharged. On January 16, 2001, he came under the care of Dr. Harvey Benn, complaining of injuries to his neck, back, jaw, shoulders, left elbow, right hand and knees. Based upon his examination, Dr. Benn's impression was acute cervical, thoracic and lumbosacral strain and sprain, contused shoulders, left elbow, right hand and both knees and temporomandibular joint dysfunction. Dr. Benn indicated in his report dated July 14, 2002 that x-rays reveal no fractures or dislocations and that the patient was seen in consultation by Dr. Ira Adler, a TMJ specialist, who fabricated a TMJ appliance. Dr. Benn also reported that the MRI's of the TMJ's were read as normal.

An MRI of the cervical spine revealed some straightening of the normal cervical lordotic curve, consistent with muscle spasm. He also indicated an MRI of the lumbar spine was read as normal. EHB was started on an intensive physiotherapy. EHB was last seen by Dr. Benn on June 6, 2002, at which time he was of the opinion that the patient's symptomology and physical findings constituted a permanent loss of bodily functions.

On February 14, 2002, an orthopedic IME was conducted by Dr. Zohar Stark. EHB's complaints at that time were pain in the neck radiating to his right shoulder and pain in the lower back not radiating to the lower extremities. Based on his examination, Dr. Stark was of the opinion that EHB had reached maximum medical improvement from treatment and that no further medical treatment, testings or physical therapy treatments were required to treat the orthopedic injuries that he sustained in the motor vehicle accident. Dr. Stark found that the treatment EHB received until the end of March 2001, appeared to be reasonable and necessary. Orthopedic benefits were terminated February 14, 2002. Having heard the argument of counsel and having reviewed the submitted documentation, I find claimant has not met his burden of proof and the treatment rendered post cut-off was not medically necessary or reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980). In reference to the pre cut-off billing, respondent argues that Dr. Benn was appropriately paid in accordance with the multiple procedure reduction formula and N.J.A.C. 11:3-29.4(m). Claimant has the burden of proof and has not offered any evidence that the billing was not processed correctly.

On January 17, 2001, EHB was seen by Dr. Frank Getson at Camden County Chiropractic. At the time, EHB was complaining of neck and back pain. Based on an examination of the cervical, thoracic and lumbar spine, Dr. Getson rendered a diagnosis of headaches, myalgia, bilateral cervical, thoracic, lumbar, and lumbosacral strain and sprain. Chiropractic treatment and rehabilitative therapy were instituted.

A chiropractic IME was conducted by Dr. Michael P. Cornely, D.C. on December 8, 2001. At the time, EHB was complaining of "migraine headaches, neck pain, low back pain and intermittent jaw pain". Based upon his examination of EHB, Dr. Cornely's diagnosis was cephalgia, cervicgia and lumbalgia. Dr. Cornely found that his examination did not reveal any objective findings to support the patient's current subjective complaints of cervical and lumbar pain. It was his opinion that EHB had reached maximum medical improvement and no further chiropractic care was indicated. Having heard the argument of counsel and having reviewed the submitted documentation, I find claimant has not met his burden of proof and that the treatment rendered post December 8, 2001 was not medically necessary or reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980). In reference to pre post December 8, 2001 billing, respondent argues Dr. Getson was appropriately paid in accordance with the

multiple procedure reduction formula and N.J.A.C. 11:3-29.4(m). Claimant offered no evidence to the contrary. N.J.A.C. 11:3-29.4(m) states, “the daily maximum applies when such services are performed for the same patient on the same day”. I find that the \$90.00 cap is applicable jointly to the combined billing of both physicians since the treatment was rendered to the same patient on the same day.

On February 20, 2001, EHB was seen by Ira J. Adler, D.D.S., for a TMJ/facial pain examination. Dr. Adler’s diagnosis was traumatically induced arthropathy of the left and right temporomandibular joints. It was found to be causily related to the accident of December 25, 2000. Dr. Adler’s treatment plan included construction of a mandibular orthopedic repositioning appliance, moist heat therapy, myofunctional therapy, and physical therapy, both intra and extra oral.

On October 31, 2001, a dental IME was conducted by Dr. Jonathan E. Burke, D.M.D. Dr. Burke’s diagnosis was resolved contusion of the mandible, which he found was related to the date of loss, December 25, 2000. Dr. Burke found that EHB had reached maximum medical improvement in that EHB was not seeking any treatment and further, that no treatment was necessary. He found that there was no indication of an internal derangement of the temporomandibular joints having ever been present. I find treatment rendered by Dr. Ira Adler is medically necessary and reasonable. Miltner v. Safeco Insurance Company of America, 175 N.J. Super. 156 (Law. Div. 1980).

Based on my review of the certification of legal services rendered, and in accordance with Rule 29, I am awarding the sum of \$2,160.00 in counsel fees. The award of counsel fees is consonant with the amount in issue and with Rule 1.5 of the Rules of Professional Conduct.

5. MEDICAL EXPENSE BENEFITS:

Awarded

| Provider | Amount Claimed | Amount Awarded | Payable to |
|----------------------------|----------------|----------------|----------------------------|
| JB | | | |
| Dr. Harvey Benn | \$3,153.67 | \$0.00 | |
| Dr. Frank Getson | \$472.00 | \$0.00 | |
| Cooper Hospital | \$172.05 | \$172.05 | Cooper Hospital |
| Pennsauken MRI | \$1,100.00 | \$1,100.00 | Pennsauken MRI |
| EHB | | | |
| Dr. Harvey Benn | \$4,439.92 | \$0.00 | |
| Dr. Frank Getson | \$820.00 | \$0.00 | |
| Diagnostic Imaging of N.J. | \$875.00 | \$875.00 | Diagnostic Imaging of N.J. |

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

Award of benefits is subject to fee schedule, co-payments and deductibles.

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): \$2,160.00

(C) INTEREST is as follows: waived per the Claimant. \$0.00.

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

December 17, 2003

Date

Richard A. De Michele, Esq.