A M E R I C A N A R B I T R A T I O N A S S O C I A T I O N
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.

NEW JERSEY MANUFACTURERS INSURANCE COMPANY
(Respondent)

AAA CASE NO.: 18 Z 600 08224 02
INS. CO. CLAIMS NO.: 2000-643178
DRP NAME: Barry K. Odell
NATURE OF DISPUTE: Fee Schedule, Future Treatment

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: D.H.

1.ORAL HEARINGS held on September 24, 2003 and November 20, 2003.

2. ALL PARTIES APPEARED at the oral hearing on September 24, 2003.

ALL PARTIES appeared telephonically for the November 20, 2003 hearing.

3. Claims in the Demand for Arbitration were NOT AMENDED at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

1. The parties stipulate that the provisions of AICRA do apply to the within claim.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

The within matter arises from an automobile accident which occurred on March 22, 2000. Based upon the date of the accident, and the stipulation of counsel, I find that the provisions of AICRA apply to the within claim. No issues regarding compliance with Respondent's Pre-Certification/Decision Point Review plan have been presented. Claimant proceeds by way of assignment from the patient. The validity of the assignment has not been challenged.

At issue are the bills of Dr. Ira Klemons and Dr. Janet Crain, who provided care to the patient, D.H. Also at issue is a claim for future treatment consisting of radiofrequency surgery.

D.H., through Dr. Crain and Dr. Klemons, had requested authorization for radiofrequency surgery. However, it was suggested by Respondent's expert, Dr. Morton Winner, of IMDC, that the surgery be denied. The claimed bills of Dr. Klemons and Dr. Crain were amended by way of Claimant's Arbitration Statement dated September 23, 2003. The bill of Dr. Klemons was asserted in the amount of $6,863.50. This was presented on a four-page bill listing treatment from April 20, 2000 through September 3, 2003. Partial payment was made towards treatment from April 20, 2000 up to and through December 13, 2000. Respondent argues that all bills were properly paid through December 13, 2000. Claimant argues that the bills were processed improperly. Claimant also seeks post cut-off care as listed in the bill through September 3, 2003. The bill of Dr. Crain is also submitted. Claimant indicates that the bill is in the amount of $42,285.96. A review of the 43-page bill, listing, according to Respondent, approximately 170 dates of treatment, indicates that the amount charged for treatment is $40,014.75. Counsel for Respondent argues that all bills were properly paid up to a cut-off on October 25, 2000 for Dr. Crain with no money due thereafter, as treatment was no longer necessary.

Respondent has provided a detailed analysis of the bills, both pre and post cut-off, indicating that certain unbundling and multiple procedure reduction formula reductions must be taken towards these bills. Respondent argues that even if the Arbitrator were to find that all treatment rendered was medically necessary, the total allowed amount for Dr. Crain would be approximately $19,094.50, and the total charge to be paid to Dr. Klemons would be $2,155.50.

Dr. Klemons and D.H. testified at hearing. Counsel for Claimant also presented Dr. Klemons' several hundred page analysis of the case at time of hearing.

Counsel for Respondent has relied upon the reports of three experts, Dr. Morton Winner, Dr. A. Giantomas and Dr. Philip R. Geron, all dentists. Of note is that Dr. Geron concluded in his 30-page analysis that there was no TMJ injury in this accident. He discounted the need for any jaw therapy as a result of the accident and concluded that there was no need for further treatment as of the date of his report, March 13, 2003. He further found that the patient's overall condition was very good and that no TMJ surgery was required.

This is grossly at odds with Dr. Klemons' records and reports. He indicated that there were continued TMJ complaints and that radiofrequency surgery is required. He stated several times during his testimony that the extended course of treatment could have been avoided if the radiofrequency surgery had been approved and performed earlier. He indicated that the expense of this surgery would have been approximately $3,500.00.

Dr. Winner has given the opinion that radiofrequency cautery treatment has not been accepted by credible authorities in the dental profession as an acceptable treatment for

TMJ. He recommends continued conservative care, advanced diagnostics, MRI, CT, etc., followed by arthroscopic procedures. He indicates that this is appropriate for Claimants who fail to improve after six months of reversible soft tissue treatment.

Dr. Giantomas indicated that the patient had indeed suffered a TMJ injury, that TMJ therapy was necessary and that the care being provided through Dr. Klemons' office was appropriate as of December, 2000. He indicated that at that time in-office therapy was required until March of 2001 with the permanent appliance being provided by Dr. Klemons being appropriate. He suggested that there be compensation for the permanent appliance, since it helped the patient more than the temporary appliance. He felt that no treatment was needed thereafter and only the appliance need be worn.

In his April 4, 2001 report, Dr. Giantomas noted that there was still slight improvement. However, the patient was still in significant discomfort as of that time and already had several injections around her TM joints. He found that all of the therapy was accident related and appropriate.

However, rather than saying that radiofrequency cautery surgery was unnecessary, he stated only that this was an alternative treatment that was controversial and that he would defer to IMDC's analysis.

Dr. Klemons also testified at length regarding Claimant's jaw pain which was completely supported by D.H.'s own testimony. They both indicated that she benefited through the course of treatment but still had pain which was clearly accident related. It was repeatedly noted by Dr. Klemons that had the surgery been performed, to essentially turn off the pain generating nerves, that the remaining therapy would not have been required. Dr. Klemons also provided various documentation to support his opinion that this was a generally accepted and reliable treatment.

I find that the patient did suffer a TMJ injury contrary to the opinion of Dr. Geron. This is supported by Respondent's own experts, including Dr. Giantomas who found that the initial treatment provided was appropriate and that further care was required, although he did not issue an opinion as to the efficacy of the RF surgery. Based upon Dr. Klemons' testimony, the patient's credible supporting testimony, and the reports of Dr. Giantomas and Dr. Winner, I find that the Claimant did suffer a TMJ injury and that all treatment provided through September 22, 2003, as submitted, was medically necessary for the treatment of Claimant's accident related injuries. N.J.A.C. 11:3-4.2. However, Claimant's own testimony supports a finding that she had plateaued from conservative treatment as of that time and that no further conservative care was necessary for the treatment of her complaints. Although the Claimant argued that there was still some improvement from conservative care, the medical records do not support this. I find that all conservative care provided after September 23, 2003 is not medically necessary.

The further requested treatment which I find to be medically necessary, based upon Dr. Klemons' testimony, is the proposed RF surgery. As detailed in Dr. Klemons' reports and testimony, I find that this treatment, for which pre-authorization was denied, is

medically necessary and accident related. Dr. Klemons indicated that it was his opinion that had this surgery been performed, the need for the conservative care would have ended long ago. I therefore award this procedure finding that no further therapy or conservative care is warranted for the treatment of Claimant's injuries, based upon Dr. Klemons' testimony and reports.

The only remaining issue is the proper processing of nearly 50 pages of bills submitted regarding pre and post cut-off treatment.

With regard to the bill of Dr. Klemons, I find that somatic psychometric testing was properly denied based upon Dr. Winner's report. The various charges for range of motion measurements under C.P.T. Code 95851 on every visit are denied. On these same dates office visits which are allowed were charged. As per Respondent's argument, these range of motion studies should have been included in the office visit charge. Charges were assessed in the amount of either $25.00 or $27.00 on 25 occasions and are denied. The joint mobility manipulation charge, under C.P.T. Code 97260 is also charged on every visit. These charges were billed in the amount of either $45.00 prior to the fee schedule change in 2001 or $70.00 after the fee schedule change. This is an allowed procedure, and based upon Dr. Klemons' testimony was performed separately to the muscles on both sides of the jaw and would be billable as two separate procedures. However, the multiple procedure reduction formula would apply as properly listed on Dr. Klemons' bill. With regard to date of treatment June 7, 2000 only, it is unclear why the amount of $27.00 was reimbursed for the primary procedure rather than the $45.00 which was billed and paid in that amount on every other date.

I also allow the charge for the orthopedic appliance on September 27, 2000. Dr. Giamtomas specifically indicates that this more permanent appliance was warranted. No audit regarding this amount claimed has been presented by Dr. Winner whose notation on his supplied audit dated September 26, 2002 indicates only, "duplicate bills already audited" (Page 8-27 of Respondent's August 21, 2003 submission). I therefore award this amount in its entirety.

I also award the modification of orthosis charges as assessed. Dr. Klemons' testimony at hearing supported the need for this modification on each office visit and, the need for the permanent appliance was documented by Dr. Giantomas.

The issue of the charges for the various therapy modalities performed on each visit, both pre and post cut-off, is more problematic from a mathematical standpoint. From the first date of treatment, April 20, 2000, through the last date that payments were made, December 13, 2000, I find that the charges were properly billed by Dr. Klemons. This is also true for dates of treatment January 10, 2001, after the cut-off, until April 27, 2001. Thereafter, Dr. Klemons adjusted his bill to reflect that the multiple procedure adjustment formula no longer applied. However, a $90.00 cap would apply to procedures for physical medicine and rehabilitation from C.P.T. Code 97001 through 98943 pursuant to N.J.A.C. 11:3-29.4(m). Dr. Klemons has argued that this would not apply to the procedures he billed. The clear reading of the code indicates otherwise, and the parties

must adjust the amounts by the $90.00 cap for each date of treatment (applicable to both Dr. Crain and Dr. Klemons on the same date). The total amount for range of motion reductions and the denied somatic psychometric testing charge is $757.00. All of the other charges are allowed and must be further adjusted as required by application of the $90.00 cap. The total claimed amount listed on the bill is $6,226.50. The co-insurance/deductible amount is listed in the amount of $18.00. The amount therefore awarded to Dr. Klemons is $5,451.50 subject to further reduction only as may be required by application of the $90.00 cap. This would further reduce the award by $770.00 to $4,681.50 for the last 14 visits.

The bill of Dr. Crain is presented on a 43-page bill from Craniofacial Associates, P.C. The bill claimed indicates a treatment balance of $38,768.55. A co-insurance deductible amount of $609.80 is listed on the bill. The balance therefore allowed would be $38,158.75. I have found that all treatment provided was medically necessary.

Respondent makes several unbundling arguments in this matter. First, it is argued that heat treatment as billed under C.P.T. Code 97010 is not permissible under N.J.A.C. 11:3-29.4(g). Counsel for Respondent has done a line-by-line mathematical analysis regarding the unbundling argument. It is noted that the two providers, Dr. Crain and Dr. Klemons, (Dr. Crain billing under the heading of Craniofacial Associates, P.C.) are one entity for billing purposes and that there is no other basis for providing separate billing other than

Counsel for Claimant has submitted a Certification of Services in the amount of $1,878.75 and seeks costs in the amount of $325.00. Based upon a review of the file, I do note that a detailed Arbitration Statement was presented, Claimant did recover a substantial portion of the amounts claimed, and that two hearings were required. Respondent argues that the amount claimed is excessive. Based upon a review of the file, I find that a counsel fee in the amount of $1,650.00 would be consonant with both the amount of the award and with Rule 1.5 of the Supreme Court Rules of Professional Conduct. See, Enright v. Lubow, 215 N.J. Super. 306 (App. Div.) cert. den. 108 N.J. 193 (1987). I also award reimbursement of costs in the amount of $325.00 representing the filing fee only.

5. MEDICAL EXPENSE BENEFITS:

Provider	Amount Claimed	Amount Awarded*	Payable to
Dr. Ira Klemons	$ 6,863.50	$ 4,681.50	Provider
Dr. Janet Crain	$42,285.96	$19,094.50	Provider

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

*Amounts awarded to Dr. Klemons and to Dr. Crain have been adjusted as required by application of the New Jersey Medical Fee Schedule and are subject to no further reductions.

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): $1,650.00

(C) INTEREST is as follows: Awarded in the amount of $478.94 to Dr. Klemons and $1,760.10 to Dr. Crain.

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

January 22, 2004 _____
Date Barry K. Odell, Esq.