

**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 60004137 03
INS. CO. CLAIMS NO.: 4042850844
DRP NAME: Lisa A. Ganzhorn
NATURE OF DISPUTE: Non payment of
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: the patient.

1. ORAL HEARING held on June 12, 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:

This matter arises out of an accident that occurred on June 2, 2002. The claimant is seeking payment for acupuncture treatment in the amount of \$1623.00.

I have reviewed the following documents in this matter as well as hearing arguments of counsel:

Arbitration Demand with attachments

Arbitration Submission including Letter of June 10, 2003 addressed to claimant's counsel from Insure Solutions

Medical Reports and Records from AM Pain Care
Certification of Services

Letter request of June 5, 2003 requesting an adjournment of the hearing from Respondent with attachments

The hearing was left open until July 31, 2003 for additional submissions. Nothing was specifically received on this matter from the Respondent. It should be noted that a post hearing submission with attachments was submitted on two companion cases which involve the same issues namely 18 Z 600 04127 03 and 18 Z 600 04129 03. It is presumed those arguments apply to this matter as well.

Claimant has submitted records that the patent was seen by Wei Ju, an acupuncturist on June 26, 2002. A 21 Day notification was sent to respondent. Four additional pre certification requests were forwarded along with chart notes and bills. On August 9, 2002 the respondent advised that the treatment was not certified. The denial was based on a physician review that indicated no documentation to support the need for the services by Dr. Plunkett. Other Explanations of Benefits indicated that the payments were denied because of an investigation into eligibility. Counsel for Respondent has indicated in their letter of June 5, 2003 and in the post hearing submission of July 31, 2003 their argument that the treatment was not medically necessary, there is an issue as to whether the claimant received the treatment, the claimant might have been involved in illegal kickbacks with regard to the referral of patients and there are questions with regard to the corporate status.

A Certificate of Incorporation, incorporating AM Pain Care was attached to respondent's papers. The Certificate showed that AM Pain Care was incorporated as a Professional Corporation and Wei Ju is indicated as the registered agent. Respondent puts forth general allegations which are unsubstantiated by evidence to argue a kickback scheme.

Respondent also argues that the record keeping of the claimant was not sufficient and is identical for numerous patients. There is no documentation from the Respondent to Claimant wherein it was requested that there should be a clarification of the records presented. The patient records reviewed by the respondent are for patients complaining of lower back pain. It is not surprising the records look similar if the complaints are the same.

Respondent argues that the Claimant has failed to prove the treatment provided was reasonable and necessary. The Claimant did submit treatment notes and reports including re-examination reports. The medical documentation for this particular patient was not challenged other than a statement made that the treatment was not necessary based on a records review by Dr. Punkett. There were no specific statements made with regard to this patient nor was there an indication as to what was specifically reviewed. I find that the claimant has sustained his burden of proof with regard to this issue.

The last argument is that the acupuncture treatment was improperly performed by the Claimant. Respondent has not provided expert evidence to support that allegation.

Attached to the submission by Respondent were two articles taken off of the internet concerning acupuncture. There was nothing provided to me that factually supports the allegation that the treatment was not rendered or not properly rendered to this patient. References to recorded statements and Examinations under Oath taken of several other patients are not enough to defeat the claim in this instance.

Lastly the Respondent requests that this matter be held in abeyance so that discovery including Examinations under Oath can be conducted. That request is denied. The Arbitration Demand was filed in this case on March 10, 2002. The Respondent was placed on notice of the treatment in this matter on June 20, 2002. The matter had been left open after the hearing for any additional evidence. The hearing was declared closed on July 31, 2003.

I therefore find that the claimant has sustained their burden of proof and award the bills requested subject to fee schedule, co payment and deductible.

Interest has been calculated by the Claimant and awarded in the amount of \$58.21.

I find the claimant is entitled to an award of counsel fees since they were successful in this action. I award based on the nature and complexity of the case, the amount awarded and the expertise, effort and experience required \$1050.00 to Counsel for Claimant plus costs as set forth below.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider	Amount Claimed	Amount Awarded	Payable to
AM Pain Care Acupuncture	\$1,623.00	\$1,623.00	Provider

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

The award is subject to fee schedule, co payment and deductible.

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): \$1050.00

(C) INTEREST is as follows: Awarded in the amount of \$58.21 .

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

September 7, 2003

Date

Lisa A. Ganzhorn, Esq.