



FORTHRIGHT

In the Matter of the Arbitration between

Seaview Orthopaedics a/s/o C.B.
CLAIMANT(s),

v.

Liberty Mutual Insurance Group
RESPONDENT(s).

Forthright File No: NJ1810001812918
Proceeding Type: In-Person
Insurance Claim File No: 031385109
Claimant Counsel: Midlige Richter
Claimant Attorney File No: 350.1570
Respondent Counsel: Law Offices of
Styliades and Jackson
Respondent Attorney File No: 423472200
Accident Date: 02/02/2015

Award of Dispute Resolution Professional

Dispute Resolution Professional: Barbara Brosnan Rivera

I, the Dispute Resolution Professional assigned to the above matter, pursuant to the authority granted under the "Automobile Insurance Cost Reduction Act", *N.J.S.A. 39:6A-5, et seq.*, the Administrative Code regulations, *N.J.A.C. 11:3-5 et seq.*, and the *Rules for the Arbitration of No-Fault Disputes in the State of New Jersey* of Forthright, having considered the evidence submitted by the parties, hereby render the following Award:

Hereinafter, the injured person(s) shall be referred to as: CB

In Person Proceeding Information

A proceeding was conducted on: 08/02/2019

Claimant or claimant's counsel appeared in person . Respondent or respondent's counsel appeared in person .

The following amendments and/or stipulations were made by the parties at the hearing:

None

Findings of Fact and Conclusions of Law

This matter involves reimbursement for medical services rendered to CB by *Seaview Orthopaedics* in the amended amount of \$21,373.20 in reimbursement for arthroscopic surgery to the right shoulder performed on September 13, 2018 as well as office visits and physical therapy rendered from April 6, 2018 through January 17, 2019. The patient was involved in an automobile accident on February 2, 2015. The record evidence indicates that CB alleges to have sustained injuries as a result of the accident. There is no issue regarding the eligibility of CB to receive PIP benefits under an automobile policy issued by respondent. The provider proceeds under an assignment of rights from the patient.

In accordance with N.J.A.C. 11:3-5.6(d) and New Jersey No-Fault PIP Arbitration Rule 43, the following issues were identified by the parties and submitted for my determination as the only issues with respect to this matter:

ISSUES:

- 1. Whether claimant has established that the arthroscopic surgery to the right shoulder performed on September 13, 2018 as well as the office visits and physical therapy rendered from April 6, 2018 through January 17, 2019 were medically necessary and causally related to injuries sustained by the patient's as a result of the February 2, 2015 motor vehicle accident?**

No other issues were identified at the hearing and no other issues will be considered in this award.

In rendering my decision, I have considered the following documents:

Claimant:

-Claimant's demand uploaded onto the Forthright portal on 10/22/18;

-Claimant's arbitration submissions uploaded onto the Forthright portal on 2/4/19 and 7/19/19 with attachments.

Respondent:

-Respondent's arbitration submissions uploaded onto the Forthright portal on 2/4/19 and 4/22/19 with attachments.

The parties did not request additional time to submit documentation in this matter therefore the hearing was closed.

1. Medical Necessity

Respondent argues that the right shoulder surgery, office visits and physical therapy, have not been established as medically necessary or causally related to injuries sustained by the patient as a result of the subject accident.

Respondent initially relies upon an Independent Medical Examination (IME) and the opinion by the examining doctor, Regina Hillsman, which was performed on January 18, 2016. At that time the patient was examined and the doctor noted that the patient had significant degenerative disc disease with stenosis and osteophytosis which was not caused by the motor vehicle accident. She also noted that maximum medical improvement had been reached in regards to the thoracic spine and the left shoulder. Based upon this examination Liberty Mutual sent a notice to the patient's attorney with a copy to the patient and the claimant advising them of the IME findings and noting that according to the IME

physician the patient may benefit from an EMG/NCV study of the neck, and left upper extremity. However, the doctor suggested considering non-steroidal anti-inflammatory drugs two times per day for 4 to 6 weeks before having an orthopedic reevaluation done after the 6 weeks. The examining doctor also determined that the patient had significant degenerative disc disease with stenosis and osteophytosis which was not caused by the accident. Maximum medical improvement had been reached in regards to the thoracic spine and the left shoulder. Therefore, all benefits for orthopedic care to the thoracic spine and left shoulder were terminated on and after February 3, 2016.

Respondent points out that the patient did not have any additional treatment other than two post-surgery follow-up visits on January 3, 2017 and April 4, 2017. Therefore there was an 8-month gap and it was now over 2 years after the accident. Respondent argues that there was minor damage to the patient's vehicle and that the patient's own records reflect that the patient had pre-existing conditions which were considered to be the primary reason for much of her treatment.

Respondent also relies upon the medical opinion of Dr. Lawrence I. Barr who performed an IME of the patient on March 14, 2018. He found that the patient had degenerative disc disease of the cervical spine which had been operated on; a rotator cuff tear of the left shoulder which had been operated on and rotator cuff disease of the right shoulder. He noted that the patient underwent an EMG/NCV on March 17, 2016 of the upper extremities which reported subacute left C7 radiculopathy. And MRI of the cervical spine dated April 22, 2015 reported moderate to advanced cervical spondylosis, central stenosis from C4 to C7, and disc herniations at C6 – C7. He noted that the MRI report of the patient's left shoulder dated February 11, 2015 reported calcific tendinitis in the distribution of the rotator cuff tendon, minimally active edema, and acromioclavicular degenerative changes. He noted that at this point the patient had plateaued medically and reached maximum medical improvement and no further treatment was indicated. With regard to causal relationship, he noted that CB had degenerative disc disease of her cervical spine. She underwent a fusion. She had a rotator cuff tear of her left shoulder and underwent surgery. With regard to the right shoulder and any theory of compensating for the left shoulder leading to right shoulder problems, he did not find for causation. He referenced The American Medical Association which published a book on causation made for physicians and non-physicians alike. He stated that it was a compendium of research on various topics of causation with a critical analysis of each. It is meant to provide physicians with a logical, rational and evidence-based methodology for offering opinions on causation. There is a chapter regarding causation of opposite unaffected upper extremity problems due to compensating for an affected limb. The article provides a review of the medical literature and in doing so reveals that there are no credible studies to support such a causative relationship. The concept of favoring one upper limb can lead to injury or illness in the other is not based on scientific evidence; instead it is an unsupportable myth." On this basis, any complaints or treatment she received for the right shoulder, in his opinion, within a reasonable degree of medical probability, is not related to the February 2, 2015 motor vehicle accident. This would include injections, therapy or surgery.

Liberty Mutual asserts that in the event an award is issued reimbursement would be subject to N.J.S.A. 39:6A-4.6 and the Physicians' fee schedule. Additionally the multiple procedure reduction formula to payment for CPT codes 29824-80, 29823-80, 29824 and 29823 on 9/13/2018 and Assistant Surgeon fees to CPT codes 29827-80, 29826-80, 29824-80 and 29823-80 on 9/13/2018 pursuant to N.J.A.C. 11:3-29.4(f). N.J.A.C. 11:3-29.4(f).

Respondent also notes that claimant billed CPT code 97161, Physical Therapy Evaluation, on 9/14/2018. This CPT code was implemented by the AMA/CPT in 2017. This CPT code does not appear on the NJ PIP fee schedule. Based on the descriptions of the services performed, Liberty Mutual would "crosswalk" CPT code 97161 to CPT code 97001 for payment purposes pursuant to N.J.A.C. 11:3-29.4 (e).

Claimant notes that the patient was involved in a motor vehicle accident on February 2, 2015. As a result of the accident she had complaints of stiffness and pain in her neck radiating down to her shoulders. She also had pain radiating from the shoulder to the elbow and pain with overhead activities as well as pain at night while she slept.

The patient first presented to Dr. Spagnuolo of Seaview Orthopedic and Medical Associates on February 23, 2015 for her ongoing complaints. A physical examination of the patient's neck revealed pain at extremes of motion, spasm and positive Spurling's test. Dr. Spagnuolo also examined the patient's left shoulder which showed limited range of motion, positive Neer's and Hawkins sign as well as AC joint tenderness.

The patient began a course of therapy at Seaview Orthopedics which continued for 2 years. During this time the patient underwent extensive treatment including a left shoulder arthroscopy, several cervical epidural injections, as well as a cervical discectomy and fusion from C6 to C7 performed on June 1, 2016. Claimant notes that all of this treatment was authorized and paid by the respondent.

The patient returned for a follow up with Dr. Nguyen at Seaview Orthopedics regularly following the cervical discectomy and fusion. At the April 4, 2017 office visit she continued to complain of stiffness in her neck. A physical examination revealed loss of range of motion and difficulty turning her neck from side to side. Her pain continued to rate as high as 6/7 – 10 especially when she had to turn often when driving for prolonged periods of time. Based upon these ongoing symptoms Dr. Nguyen recommended that the patient continue her home exercise program concentrating on stretching from side to side. The patient reached out to the doctor on May 19, 2017 for complaints of worsening pain and stiffness in the neck. Based upon these continued symptoms Dr. Nguyen sought precertification to restart physical therapy on May 24, 2017. The patient attended ten (10) physical therapy sessions. Claimant notes that reimbursement for these physical therapy sessions was denied by the respondent but that reimbursement was awarded by this DRP in a prior arbitration proceeding, *NJ1761138, Seaview Orthopaedics a/s/o CB v. Liberty Mutual Insurance Group*. That award found that the physical therapy was medically necessary and causally related to injuries sustained by the patient as a result of the subject accident.

Claimant notes that the patient returned to Dr. Spagnuolo on December 8, 2017, for complaints of worsening right shoulder pain. Claimant was now 2½ years past the treatment, including the surgery to her left shoulder, however, she continued to have pain with overhead activities and pain radiating down the lateral side of the arm. Due to this ongoing pain the patient had been favoring her right shoulder for the past 2 years causing an increase in the pain in that shoulder. It was also noted that the patient had ongoing problems with her cervical spine. This was referring pain to the shoulder and causing her to use the shoulder in an awkward manner. Examination of the patient's right shoulder showed active range of motion was limited by pain, positive Hawkins and Neer's sign, tenderness at the AC joint and pain when testing the supraspinatus tendon. Dr. Spagnuolo assessed that the patient required an MRI of the right shoulder as he suspected that there was some impingement and strain of the rotator cuff tendon.

Dr. Spagnuolo reviewed the results of the MRI and met with the patient on January 19, 2018. The right shoulder MRI showed a partial tear of the rotator cuff tendon, an increase in the subdeltoid space, and degenerative changes at the AC joint consistent with impingement syndrome. He assessed that the patient's right shoulder pathology was the result of overuse and favoring of the right shoulder following her prior surgery to the left shoulder. He recommended that she undergo a corticosteroid injection to help alleviate the ongoing pain symptoms. He also noted that this condition was causally related to the injury sustained by the patient as a result of the 2015 motor vehicle accident. The patient returned to Dr. Spagnuolo for a right shoulder corticosteroid injection on February 9, 2018, which was authorized and paid for by the respondent. The patient followed up on April 6, 2018 with continued complaints in the right shoulder which were getting progressively worse. She noted that she experienced about 3 weeks of relief following the injection but that this relief was followed by a recurrence of pain symptoms. The

patient described the pain as occurring with overhead activities, when she reached on the lateral side of the arm, and pain radiating down the lateral arm when she slept at night. Dr. Spagnuola assessed that the patient had developed impingement syndrome and pain of her AC joint caused by overuse of the right arm following her left shoulder surgery. Based upon the patient's ongoing symptoms and failure to improve despite non-operative treatment Dr. Spagnuola determined that the patient required arthroscopic surgery of the right shoulder. He sought pre-certification with the respondent to proceed with the right shoulder surgery but was denied. He filed several appeals but all were denied. Claimant notes that over the next several months the patient continued to follow-up with Dr. Spagnuola and Dr. Meyers, her pain management physician. However, reimbursement for these office visits were denied by the respondent.

Claimant notes that on September 13, 2018, the patient ultimately underwent a right shoulder diagnostic and operative arthroscopy which was denied reimbursement by the respondent. The patient returned to Dr. Spagnuola for a post-operative follow-up examination on September 19, 2018. He assessed that the patient was improving with her current treatment and recommended that she begin a course of physical therapy to maximize the outcome of her right shoulder surgery.

Claimant notes that the patient's post-operative physical therapy performed from September 14, 2018, through December 4, 2018, were denied reimbursement by the respondent. However, the patient was seen by Dr. Meyers for reevaluation on October 4, 2018 which was paid by the respondent after the filing of the subject arbitration demand. At that time, it was noted that she remains limited to chronic and persistent discomfort although she was stable with her current chronic pain management treatment regimen. Examination of the patient's neck remained positive for tenderness and spasm bilaterally. Dr. Meyers requested that she continue her current pain management treatment regimen which included oxycodone to help control her pain symptoms.

The patient followed up with Dr. Spagnuola on November 2, 2018. She noted that her right shoulder was making good progress following the surgery, however, there was still some stiffness in the shoulder and some difficulty with overhead activities. Dr. Spagnuola recommended that she continue her physical therapy exercises and requested that she return in the near future so that her progress could be monitored. The patient returned to Dr. Nguyen for ongoing complaints of neck pain on November 13, 2018. She noted that her recent shoulder surgery had slightly aggravated her prior neck pain although it was improving as she underwent physical therapy for the shoulder. The cervical examination was positive for limited range of motion, tenderness, and spasm. Dr. Nguyen requested that she continue physical therapy and follow-up in 6 months or sooner if she had any worsening problems.

Claimant notes that Dr. Meyers and Dr. Spagnuola continued to monitor the patient's post-surgical pain management regimen through January 2019. During this time, she remained stable with physical therapy and utilization of analgesic medication for pain purposes. This allowed her to carry out a fairly normal level of functional activities.

Claimant also points to Dr. Spagnuola's January 26, 2018 appeal letter regarding the denial of pre-certification and reimbursement of the subject surgery. He noted that the patient sustained a severe injury in the February 2, 2015 accident which caused her to undergo left shoulder surgery. The surgery was performed in June 2015. Unfortunately, she had continued pain in her left shoulder. Due to the continued pain and overuse of the right shoulder, she began experiencing symptoms in the right shoulder. The right shoulder was positive for orthopedic testing. Therefore, he opined, within a reasonable degree of medical probability, that her symptoms in the right shoulder had been aggravated due to overuse from the left shoulder injury and the fact that she never successfully recovered fully from the left shoulder injury. Therefore, he stated that the motor vehicle accident of February 2, 2015 was, within a reasonable degree of medical probability, causally related to the recent ongoing right shoulder pain due to favoring the right shoulder. He noted that she required a corticosteroid injection to lessen

the discomfort which was medically necessary and causally related to injuries sustained as a result of the prior accident.

Law:

When disputed, the causal relationship of the injuries to the accident in question must be established by the claimant by a preponderance of the evidence. *Bowe v. New Jersey Manufacturers Insurance Company*, 367 N.J. Super 128 (App.Div.2004). Proof by a preponderance of the evidence allows for a conclusion that an allegation is probably true or stated another way that an allegation is more likely than not. When the evidence is in equal balance the claimant has not proven the case. The claimant's evidence and argument must weigh heavier and be more persuasive. It is not a question of how much heavier, only that it is. When there is a difference of medical opinion, generally, the treating provider is afforded greater weight. In regard to causation, in *Bowe*, the court made it clear that a claimant must show that the pre-existing injury or condition was aggravated by the accident for which coverage is sought. Thus, where a PIP carrier asserts that the insured's condition is exclusively related to a pre-existing condition or injury, the insured has the burden of proving that the treatment at issue is causally linked to an aggravation of a pre-existing condition or a new independent injury, either of which must have resulted from the particular accident. *Id.*

The law concerning the determination of medical necessity is as follows: where there is a dispute concerning medical necessity, the burden rests with the claimant to establish by a preponderance of the evidence that the services for which he seeks PIP payments were reasonable, necessary and causally related to an automobile accident. "The burden of establishing this by a preponderance of the evidence should remain on plaintiff as in any other civil case." *Miltner v. Safeco Ins. Co. of Am.*, 175 N.J. Super. 156 (Law Div. 1980).

Pursuant to N.J.A.C. 11:3-4.2, "medically necessary" or "medical necessity" means that the medical treatment or diagnostic test is consistent with the clinically supported symptoms, diagnosis or indications of the injured person, and: (1) The treatment is the most appropriate level of service that is in accordance with the standards of good practice and standard professional treatment protocols including the Care Paths as applicable; (2) The treatment of the injury is not primarily for the convenience of the injured person or provider; and (3) Does not include unnecessary testing and treatment.

Pursuant to N.J.A.C. 11:3-4.2, "clinically supported" means that a health care provider prior to selecting or ordering the administration of a treatment or diagnostic test has: (1) Personally examined the patient to insure that the proper medical indications exist to justify ordering the treatment or test; (2) Physically examined the patient including making an assessment of any current and/or historical subjective complaints, observations, objective findings, neurologic indications, and physical tests; (3) Considered any and all previously performed tests that relate to the injury and the results and which are relevant to the proposed treatment or test; and (4) Recorded and documented these observations, positive and negative findings and conclusions on the patient's medical records.

N.J.S.A.11:3-29.2 defines "medically necessary" to mean: 1.the medical treatment or diagnostic test is consistent with the clinically supported symptoms, diagnosis or indications of the injured person; 2.the treatment is the most appropriate level of service that is in accordance with the standards of good practice and the provisions of N.J.A.C. 11:3-4, as applicable; 3. the treatment is not primarily for the convenience of the injured person or provider; 4.the treatment is not unnecessary; and 5.the treatment does not include unnecessary testing.

The necessity of medical treatment is a matter to be decided in the first instance by the claimant's treating physicians and an objectively reasonable belief in the utility of a treatment or diagnostic method based on the credible and reliable evidence of its medical value is enough to qualify the expense for PIP

reimbursement. *Thermographic Diagnostics, Inc. v. Allstate Ins. Co.*, 125 N.J. 491 (1991). While it is true the treating physician's opinion is not automatically accorded conclusive weight, it is accorded an appropriate measure of deference. *Black & Decker Disability Plan v. Nord*, 123 S. Ct. 1965 (2003).

Medical expenses have been considered "necessary" even if the services only provide temporary relief from symptoms and will neither cure nor repair a medical condition or problem. *Miskofsky v. Ohio Cas. Ins. Co.*, 203 N.J. Super. 400 (Law Div. 1984). Palliative care is compensable under PIP when it is medically reasonable and necessary. *Elkins v. N.J. Mfrs. Ins. Co.* 244 N.J. Super. 695, 700-701 (App. Div. 1990). See also *Perun v. Utica Mut. Ins. Co.*, 280 N.J. Super. 280 (Law Div. 1994).

Analysis and Findings:

I have reviewed the record evidence and the arguments of counsel with respect to their positions in this matter. I find that the claimant has established, by a preponderance of the evidence, that it is entitled to reimbursement for the arthroscopic surgery to the right shoulder performed on September 13, 2018 as well as office visits and physical therapy rendered from April 6, 2018 through January 17, 2019. I have considered the IME opinion of Dr. Hillsman but I am persuaded that the opinion, which was rendered in January 2016, did not address the patient's right shoulder complaints. As noted in the prior award, *NJ1761138, Seaview Orthopaedics a/s/o CB v. Liberty Mutual Insurance Group* regarding the physical therapy treatment, I am persuaded that the IME physician recommended further testing in the form of EMG/NCV for the patient's neck and that further medication and re-examinations were recommended. I have also considered the medical opinion of Dr. Lawrence I. Barr who performed an IME of the patient on March 14, 2018. I considered his opinion that the patient had plateaued medically and reached maximum medical improvement and no further treatment was indicated. I also considered his opinion with respect to causal relationship where he noted that any theory that CB injured her right shoulder due to compensating for the left shoulder leading to right shoulder problems was not established. He referenced The American Medical Association which published a book on causation contained a chapter regarding causation of opposite unaffected upper extremity problems due to compensating for an affected limb. He noted that the article provided a review of the medical literature and determined that there are no credible studies to support such a causative relationship. He notes that this publication indicates that the concept of favoring one upper limb can lead to injury or illness in the other is not based on scientific evidence; instead it is an unsupportable myth. While I conclude that Dr. Barr relied upon a reputable source of information, I find that the material he discusses does not address the exacerbation of degenerative or pre-existing injuries with respect to use of a limb in compensation of an injured limb. In this instance it is clear from Dr. Spagnuola's records that the 61-year-old female patient had findings of degenerative conditions in her spine and in both of her shoulders as indicated by the MRIs. A complete review of his records, including a January 19, 2018 examination, indicates that the patient reported a prior condition with her shoulder in 2010 which resolved with physical therapy and it was noted that "she did great for several years". However, he concluded that the right shoulder worsened due to overuse. I am persuaded by his opinion in this matter which is supported by the records indicating that the patient repeatedly complained of cervical and left shoulder pain and received conservative therapy to these areas as results of complaints related to the accident. The records indicate that the patient did not have a good recovery from the left shoulder surgery and had continuing complaints to the left shoulder and ultimately developed pain and discomfort in the right shoulder. I find that the patient attempted to treat the right shoulder discomfort conservatively but that the conservative treatment was ineffective. I am also persuaded that the respondent authorized payment for the steroid injections in the right shoulder thus the denial of reimbursement for the surgery is questionable. Therefore, I find that claimant has established that the patient's complaints to the right shoulder resulted from the injuries sustained in the subject accident.

With respect to reimbursement, I am persuaded by argument that the multiple procedure reduction formula should apply to payment for CPT codes 29824-80, 29823-80, 29824 and 29823 on 9/13/2018

and Assistant Surgeon fees to CPT codes 29827-80, 29826-80, 29824-80 and 29823-80 on 9/13/18 pursuant to N.J.A.C. 11:3-29.4(f). N.J.A.C. 11:3-29.4(f). It appears that claimant properly billed CPT code 97001 for payment purposes pursuant to N.J.A.C. 11:3-29.4 (e). Based upon the foregoing claimant is awarded pursuant to its Rule 16 submission claimant is awarded a total of \$9586.67 for the 9/13/18 surgery with respect to the primary surgeon; \$1629.73 to the assistant surgeon (17% of the primary surgeon fee); and the fee scheduled amount for the evaluations and physical therapy rendered from April 6, 2018 through January 17, 2019 for a total of \$15,328.04.

Attorney Fee

I find that the claimant to be a prevailing party. Have been met in this instance. However, an award of attorney's fees to a successful claimant is not mandatory but lies within the discretion of the DRP as set forth in N.J.A.C. 11:3-5.6 (e)(1)(2). The factors a DRP may consider in determining whether to award counsel fees are as follows:

The insurer's good faith in refusing to pay the demand;

[The] excessiveness of plaintiff's demand;

[The] bona fides of one or both of the parties;

The insurer's justification in litigating the issues;

The insured's conduct in contributing substantially to the necessity [of litigation];

The general conduct of the parties; and

The totality of the circumstances.

See Scullion v. State Farm Ins. Co., 345 N.J. Super. 431, 438 (App. Div. 2001) quoting *Enright v. Lubow*, 215 N.J. Super. 306, 313 (App. Div. 1987).

Having considered the above factors and determining Claimant a successful claimant entitled to attorney fees, the next issue to determine is the amount of fees.

In determining the proper amount of fees, "the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *H.I.P. v. K. Hovnanian at Mahwah VI, medical provider was not*, 291 N.J. Super. 144, 157 (Law Div. 1996) citing *Robb v. Ridgewood*, 269 N.J. Super. 394, 404 (Ch. Div. 1993). The DRP is given discretion to adjust the fees upward or downward. *Id.* at 158.

N.J.A.C. 11:3-5.6(d)(2) states that "[t]he award shall apportion the costs of the proceedings, regardless of who initiated the proceedings, in a reasonable and equitable manner consistent with the resolution of the issues in dispute. N.J.A.C. 11:3-5.6 (e)(1)(2) provides that the DRP may: "[c]alculate the "lodestar," which is the number of hours reasonably expended by the successful claimant's counsel in the arbitration multiplied by a reasonable hourly rate in accordance with the standards in Rule 1.5 of the Supreme Court's Rules of Professional Conduct." R.P.C. 1.5 sets forth the factors to be considered in determining the reasonableness of a fee. The factors are as follows:

the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude

other employment by the lawyer;
the fee customarily charged in the locality for similar legal services;
the amount involved and the results obtained;
the time limitations imposed by the client or by the circumstances;
the nature and length of the professional relationship with the client;
the experience, reputation, and ability of the lawyer or lawyers performing the services;
whether the fee is fixed or contingent.

Claimant has submitted a detailed attorney fee certification in the amount of \$2,762.50 fees and \$228.90 in costs. I have taken into consideration that claimant's counsel prepared and filed the demand, prepared the pre-hearing submission, reviewed correspondence from Forthright and correspondence and submissions from respondent and appeared for the hearing in person. I have taken into consideration that claimant's billing rate of \$325.00 per hour for 8.5 attorney hours. I have considered respondent's detailed opposition and arguments which included: the fees are excessive and the hourly rate is excessive given the time and labor required and the level of difficulty involved. Respondent also objects to the cost component and number of hours and argues any fee must be commensurate with the award. In accordance with the case law, rules and statutes cited, I have determined the number of hours reasonably expended by claimant's counsel multiplied by a reasonable hourly rate and have considered whether same should be enhanced or reduced. I have considered that claimant was successful in prosecuting this claim. Having considered the claimant's certification, respondent's objections, and all relevant circumstances including the amount of recovery and the guidelines/factors set forth in R.P.C. 1.5, I award \$1,600.00 in attorney's fees consonant with the award and \$228.90 in costs.

Therefore, the DRP ORDERS:

Disposition of Claims Submitted

1. Medical Expense Benefits: Awarded

Medical Provider	Amount Claimed	Amount Awarded	Payable To
Seaview Orthopaedics	\$21,373.20	\$15,328.04	Seaview Orthopaedics

The awarded amounts are subject to:

- Deductibles
- Co-payments
- Medical fee schedule
- Payments made
- Policy limits

- 2. Income Continuation Benefits Not in Issue
- 3. Essential Services Benefits Not in Issue
- 4. Death Funeral Expense Benefits Not in Issue

5. Award of Interest Awarded Amount to be calculated by Respondent pursuant to N.J.S.A. 39:6A-5.2g

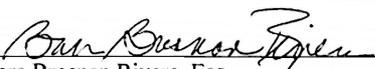
Attorney's Fees and Costs

I find that the Claimant prevailed and I award the following costs and fees (payable to Claimant's attorney unless otherwise indicated) pursuant to N.J.S.A. 39:6A-5.2g

Cost:\$ 228.90 Attorney's fees:\$ 1,600.00

THIS AWARD is rendered in full satisfaction of all claims and issues presented in the arbitration proceeding.

Entered in the State of New Jersey



Barbara Brosnan Rivera, Esq.
Dispute Resolution Professional

Date:09/16/19