In the Matter of the Arbitration between

Seaview Orthopaedics a/s/o J. L.
CLAIMANT(s),

v.

Forthright File No: NJ1901001825575
Proceeding Type: In-Person
Insurance Claim File No: 0369634430
Claimant Counsel: Midlige Richter
Claimant Attorney File No: 350.1606
Respondent Counsel: Law Offices Pamela D. Hargrove
Respondent Attorney File No: 0369634430.2
Accident Date: 05/16/2015

Allstate New Jersey
RESPONDENT(s).

Award of Dispute Resolution Professional

Dispute Resolution Professional: Robert C. La Salle Esq.

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: JL

In Person Proceeding Information

A proceeding was conducted on: 07/10/2019

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:

The amount in dispute was amended to $762.17.

Findings of Fact and Conclusions of Law

The eligibility of the injured person to pursue this claim for PIP benefits as a result of a motor vehicle accident that occurred on 5/16/15, and pursuant to the terms and conditions of a policy of automobile insurance issued by the respondent, is not in dispute.

In accordance with *N.J.A.C.* 11:3-5.6d and Forthright *Rule* 43, the following issues have been identified by the parties and submitted for my determination:

- Medical necessity and causation.

In dispute are treatment dates from 1/11/19 to 4/4/19 (PT and OVs), and for proposed lumbar surgery and left carpal tunnel surgery.

No other issues were identified at the hearing or will be considered, including any other issues raised in either party's pre or post hearing submissions. Issues previously raised but not identified at the hearing are deemed abandoned.

I emphasize that these were the only issues identified at the hearing. I will not attempt to discern additional issues either from the parties' submissions or from any evidence submitted.

The parties are reminded that Rule 16 requires identification of evidence relied upon in support of issues. Rule 16 will be strictly enforced and only such evidence that has been identified has been considered.

Statement of the law

Under *Miltner v. Safeco Ins. Co. of America*, 175 *N.J.Super.* 156 (LawDiv.1980), where there is a dispute as to PIP benefits, the burden rests on the claimant to establish by a preponderance of the evidence, i.e., the greater weight of the believable evidence, that the services for which payment of PIP benefits is sought were reasonable, necessary and causally related to an automobile accident.

N.J.A.C. 11:3-4.3 provides as follows:

"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 in the Appendix, 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 or treatment.

N.J.A.C. 11:3-4.2 also provides that "clinically supported" means that a health care provider, prior to selecting, performing or ordering the administration of a treatment or diagnostic test, has: (1) personally examined the patient to ensure 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, neurological 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.

Respondent's evidence and argument

Respondent denied payments for physical therapy, office visits and x-rays on dates of service January 29, 2019, March 5, 2019, March 11, 2019 and April 4, 2019 based upon the Independent Medical Examination of Dr. Arnold T. Berman and the Independent Medical Examination Appeal of Dr. Sean Lager.

Respondent denied payments for future treatment/decompression and fusion surgery based upon the Medical Director Review and the Medical Director Review Appeal of Dr. Sean Lager.

Respondent denied payments for future treatment/left carpal tunnel surgery based upon the based upon the Medical Director Review and the Medical Director Review Appeal of Dr. Sean Lager.

On November 15, 2018, Dr. Sean Lager prepared a Medical Director Review on behalf of the Respondent regarding the medical necessity for future treatment/decompression and fusion surgery. Dr. Lager stated that based on the provided documentation, the claimant was recommended for lumbar decompression and fusion at L4-5 and L5-S1. The MRI report of the lumbar spine dated October 30, 2018 revealed disc bulge L4-5, unchanged between studies. Previously noted mild broad herniation to the left at L5-S1 had mildly improved between studies. This study was compared to a prior study of the lumbar spine dated July 8, 2015. Physical examination of the lower back revealed no swelling. There was tenderness and spasming. Strength was graded at 5/5. Reflexes were normal. Sensation was decreased on the right. Antalgic gait. Objective findings do not correlate with the findings on the MRI report of the lumbar spine. Therefore, the claimant is recommended to undergo an independent consultative opinion with film review for further determination. Medical necessity has not been established based on the provided documentation. Based on Dr. Lager's review, future treatment/decompression and fusion surgery was denied as not clinically supported as medically necessary.

The provider appealed this decision and a Medical Director Review Appeal was conducted on December 10, 2018 by Dr. Sean Lager. Dr. Lager stated that after review of the records and an appeal letter by Dr. Nguyen, the MDR on November 15, 2018 should be upheld. His opinion remained unchanged. Based on the provided documentation, the claimant was recommended for lumbar decompression and fusion at L4-5 and L5-S1. The MRI report of the lumbar spine dated October 30, 2018 revealed disc bulge L4-5, unchanged between studies. Previously noted mild broad herniation to the left at L5-S1 had mildly improved between studies. This study was compared to a prior study of the lumbar spine dated July 8, 2015. Physical examination of the lower back revealed no swelling. There was tenderness and spasming. Strength was graded at 5/5. Reflexes were normal. Sensation was decreased on the right. Antalgic gait. Objective findings do not correlate with the findings on the MRI report of the lumbar spine. Therefore, the claimant is recommended to undergo an independent consultative opinion with film review for further determination. Medical necessity has not been established based on the provided documentation. Therefore, future treatment/decompression and fusion surgery was not certified.

On December 6, 2018, Dr. Sean Lager prepared a Medical Director Review on behalf of the Respondent regarding the medical necessity for future treatment/left carpal tunnel surgery. Dr. Lager stated that after reviewing the medical records attached the CPT codes S5000 Prescription drug, generic x30, 64721 Carpal tunnel surgery, 97162 Physical therapy evaluation; moderate complexity, and 64721 Carpal tunnel surgery, are denied. Based on the provided documentation, the motor vehicle accident on record occurred forty-three (43) months ago. Per the treating physician's medical note "He says the hands have been bothering him since the time of the accident, but his other injuries took precedence and never had treatment for them. It has been a year and a half since the time of the accident. The claimant did not seek treatment for over a year after the motor vehicle accident on record, which questions the legitimacy of the complaints in relation to this accident. He's had nerve conduction studies performed". The EMG

study was not provided for review and it is unclear if the EMG was obtained before or after the motor vehicle accident on record. There is no evidence cervical radiculopathy has been ruled out as the MRI report of the cervical spine was not provided for review. There is no evidence the claimant's current complaints are in relation to this accident. The requested medication and post-operative physical therapy are secondary to the requested surgery, which was denied. Causally related medical necessity has not been established as it relates to the motor vehicle accident on record. Based on Dr. Lager's review, future treatment/left carpal tunnel surgery was denied as not clinically supported as medically necessary.

The provider appealed this decision and a Medical Director Review Appeal was conducted on January 3, 2019 by Dr. Sean Lager. Dr. Lager stated that after review of the records and an appeal letter by Dr. McDaid, the MDR on December 6, 2018, which denied CPT codes 64721, 97162, S5000x30, 64721, should be upheld. Per the treating physician's medical note "He says the hands have been bothering him since the time of the accident, but his other injuries took precedence and never had treatment for them. It has been a year and half since the time of the accident. The claimant did not seek treatment for over a year after the motor vehicle accident on record, which questions the legitimacy of the complaints in relation to this accident. He's had nerve conduction studies performed". It was further noted in the treating physician's recent note "the claimant reported his left hand was starting to hurt him". Due to the gaps in treatment causality is questionable. Therefore, the claimant is recommended to undergo an independent consultative opinion with film review for further determination. Therefore, future treatment/left carpal tunnel surgery was not certified.

On January 4, 2019, Dr. Arnold T. Berman performed an Independent Medical Examination of the patient. Cervical spine examination demonstrated 1 ½-inch transverse ACDF incision and the following range of motion findings: flexion 30° (Normal=50°) and extension 30° (N=60°) were reduced; right rotation, left rotation, right lateral flexion and left lateral flexion were normal. There was no tenderness, spasm or pain with palpation and mild pain on range of motion. The neurologic examination of the cervical spine showed reflexes to be normal and equal. The deltoid, triceps, biceps, forearm muscles and intrinsic muscles of the hand were normal. The Spurling's Test for nerve root compression was negative, sensory testing was normal and Waddel Testing was normal. The thoraco-lumbar spine examination demonstrated normal range of motion. There was no tenderness, spasm or pain with palpation and no pain on range of motion. The neurologic exam of the lower extremities demonstrated deep tendon reflexes (Patellar and Achilles) was normal. Quadriceps, hamstrings, calf muscles, extensor hallucis longus were normal and equal bilaterally. Sensation testing with a pinwheel demonstrated stocking glove loss of sensation on the right, which is non-anatomic and non-physiological. Babinski's Test (for upper motor neuron lesion, neurological involvement) was normal. The Sitting Lasegue's Test for nerve root involvement was negative with no radiculopathy noted. Lasegue's Straight Leg Raising Test for nerve root/disc involvement was negative and the Straight Leg Raising Test for sciatica, sacroiliac involvement and lumbo-sacral involvement was negative and resulted in mild back pain only that was non-radicular in nature. Heel walk was normal and toe walk was also normal. There was no pain noted while performing a full squat, deep knee bend. There was no atrophy of the right or left thigh and no atrophy of the right or left calf.

The Right and Left wrists demonstrated healed incisions and the normal ranges of motion. There was no pain on ROM and no tenderness or effusion was noted. The Phalen's Test, for median nerve involvement, was negative and Tinel's sign, for Median nerve compression/Carpal Tunnel was also negative. There was no atrophy of the Right upper arm and no atrophy of the Left upper arm. There was no atrophy of the Right forearm and no atrophy of the Left forearm. Grip Testing: Jamar strength testing demonstrated 65 lbs. on the right and 55 lbs. on the left. Lateral pinch was 19 lbs. on the right and 19 lbs. on the left. Hand grip manually was strong bilaterally. Dr. Berman diagnosed cervical spine strain/sprain resolved with no residuals and with no aggravation to pre-existing degenerative disc disease. ACDF surgery was unrelated due to pre-existing degenerative disc disease and bulging discs; lumbar spine

strain/sprain resolved with no residuals with no aggravation to L4-5 disc bulge and L5-S1 broad herniated disc on MRI, pre-existing with no clinical correlation with the MRI. There is no radiculopathy and no causation with this injury; Right and Left Carpal Tunnel Syndrome due to prior repetitive activity and not the result of this injury. The right and left CTS is resolved, post-op. Upon completion of the examination and history review of available documents, it was Dr. Berman's professional opinion that treatment has been excessive and that the patient had reached maximum medical improvement. No further Orthopedic Spine Surgery medical services, including but not limited to, treatment, diagnostic testing, durable medical equipment and prescription medications was authorized after January 20, 2019 per the Independent Medical Examination of January 4, 2019 which placed this claimant at maximum medical improvement.

The provider appealed this decision and an Independent Medical Examination Appeal was conducted on February 12, 2019 by Dr. Sean Lager. Dr. Lager stated that based on the medical documentation supplied for review, the IME dated January 4, 2019 performed by Dr. Berman which denied further treatment by placing the claimant at MMI status, should be upheld. Per the IME reports and multiple treating physician's medical notes it was noted the claimant's medical history was positive for similar complaint due to a work-related low back injury that occurred 25 years. He was treated with chiropractic treatment and denied prior neck or other back injuries. However, prior the treating physician's medical note dated June 19, 2015, it was documented " For a few months prior to MVA 5/2015 he was having some pain in the neck and low back, which was worsened by the MVA" and it was further noted in the treating physician's medical note dated April 21, 2016 " He states he did slip on ice approximately one year ago, and treated with his family physician for mainly right shoulder symptoms. He denied injury to his neck or low back in that fall". There appears to be conflicting past medical history. The claimant's medical history was also positive for diabetes. Per the treating physician's medical note dated October 1, 2018, "he relates the casualty to his motor vehicle accident from physical therapy for his back and that exacerbated his ankles and caused his ankle problems". An x-ray of the foot revealed a little bit of pes planus. However, there is no evidence the claimant's current complaints of low back pain are in relation to the motor vehicle accident on record as there appears to be conflicting past medical history of when the claimant's lower back pain started. "Adult-acquired flatfoot deformity (AAFD) is a common problem. The most common etiology of AAFD is posterior tibial tendon dysfunction (PTTD) Other causes of AAFD include osteoarthritis, inflammatory, arthroplasties, posttraumatic deformity, and congenital anomalies. Symptoms usually begin in the fifth and sixth decades of life". Chou, Dr. Loretta B. (2014) OKU 5. Foot and Ankle. American Academy of Orthopedic Surgeons. There is no evidence the claimant's current complaints are in relation to this accident. Causally related medical necessity has not been established as it relates to the motor vehicle accident on record. Therefore, the claimant remains at MMI.

Claimant's evidence and argument

Proposed Lumbar Surgery

Claimant was a 54-year-old male who was involved in a motor vehicle accident is the restrained driver of a vehicle that was struck head-on. Claimant sustained multiple injuries involving his lower back, neck, knees and both hands. Claimant first presented to Dr. Nguyen January 24, 2017 with complaints of neck pain, upper back pain, and lower back pain.

Claimant reported diffuse neck pain radiating to both shoulders, radiating pain into the arms with numbness and tingling in both hands, right greater than left. Claimant also had numbness in the middle, ring and small fingers. Dr. Nguyen noted the mechanism of the injury, notably the claimant was struck head-on with a positive airbag deployment. Claimant had treated with chiropractors and pain management since the accident, and had undergone multiple injections with Dr. Dakniss and Dr. Hudak. Claimant was asymptomatic and in his usual state of health prior to this accident.

Dr. Nguyen reviewed claimants MRI, which showed distributions at C5 - C6 and C6 - C7. He performed an examination of the cervical spine, which was positive for tenderness, spasm, limited range of motion, decreased sensation in the right hand, and a positive Spurling sign.

Dr. Nguyen noted the foregoing history, and the claimant had ongoing radicular symptoms. Dr. Nguyen noted that claimant had persistent radicular symptoms by history and by his physical examination. He noted the claimant had failed nonoperative treatment including chiropractic, passage of time, alteration of activity, and multiple interventional pain management injections. He noted that claimant was a candidate for a cervical discectomy.

He discussed the case with Dr. McDaid. who noted the claimant had a carpal tunnel injury in addition to the cervical radiculopathy. He noted the claimant's EMG corresponded for carpal tunnel syndrome, but Dr. Nguyen concluded that claimant also had cervical radiculopathy with the numbness and tingling in the middle, ring and small fingers of his right hand which correlates to the C6 and C7 dermatome.

Dr. Nguyen sought pre-certification to perform this procedure, which was denied and appealed to no avail. Specifically, Dr. Newman notes that Dr. Berman failed to review the MRI in his IME report, and that his physical examination was essentially normal. It should be noted that claimant's cervical surgery was awarded on March 2, 2018 and performed on June 27, 2018. However, respondent did not issue payment for this surgery until January 31, 2019, post-filing of the subject arbitration.

Claimant returned to Dr. Nguyen on September 18, 2018. He was now 3 months removed from surgery. Although he still felt some numbness and tingling in his hands primarily at night, now felt that he was improved compared to prior to surgery. Claimant continued to complain of ongoing low back pain in addition to his neck pain. Now that the neck was improved following the surgery, his lumbar pain was now his worst complaint. Claimant described low back pain with intermittent pain to the legs as well as numbness and tingling in the legs and feet, particularly the soles of the feet. Examination of claimant's lower back was positive for tenderness, spasming, limited range of motion. and positive straight leg raise test to the right. Dr. Nguyen also reviewed claimant's post-accident MRI dated 7/8/15, which revealed a small disc bulge at L4-5 and a central to left sided disc herniation at L5-S1. Claimant's thoracic MRI showed a disc herniation at T6-7 with bulging disc at T7-7 and T11-12. Dr. Nguyen requested that claimant continue physical therapy for his neck, if his lower back remained symptomatic they would address it at his next visit.

Claimant returned to Dr. Nguyen on October 9, 2018 at which time his lower back complaints continued as did the positive findings on physical exam. Dr. Nguyen assessed that claimant remained quite symptomatic despite conservative treatment including epidural injections with Dr. Daknis in the past. He requested that claimant undergo an updated lumbar MRI before returning for a surgical consultation.

On November 6, 2018, claimant returned to Dr. Nguyen to review the results of his recent lumbar MRI. Claimant's updated lumbar MRI revealed a broad disc bulge at L4-5 and he continued to have a central left sided disc herniation at L5-S1. Dr. Nguyen determined that claimant had failed non-operative treatment including significant therapy, chiropractic treatment, and pain management. He assessed that claimant required surgical intervention which would entail a decompression and fusion at L4-5 and L5-S1. Dr. Nguyen sought pre-certification to proceed with claimant surgical intervention but as denied and appealed to no avail.

Claimant returned to Dr. Nguyen on January 29, 2019. This was the first office visit denied by respondent. He continued to complaint of low back pain radiating to both legs with numbness and tingling in both feet. He rated this pain 8/10. Dr. Nguyen again emphasized that claimant had failed nonoperative treatment and that claimant's surgery was medically necessary, medically indicated, and

directly causally related to the motor vehicle accident.

Proposed Left Carpal Tunnel Surgery:

Claimant first presented to Dr. McDaid on October 6, 2016 with complaints of bilateral wrist pain and bilateral hand pain. Claimant relayed the foregoing history, and noted that his hands have been bothering and since the time of the accident, but his other injuries took precedence. Examination was positive or median nerve compression. Dr. McDaid noted the claimant had an EMG performed, which showed bilateral carpal tunnel syndrome. He opined the claimant sustained a double crush injury, and noted that his symptoms in the small, ring and middle fingers are more indicative of cervical radiculopathy. Dr. McDaid felt claimant's best treatment would be a diagnostic and therapeutic carpal tunnel injection, which would be performed as a precursor to surgery.

Dr. McDaid performed this procedure on November 17, 2016. Claimant tolerated the procedure well, and returned to Dr. McDaid on December 22, 2016. Claimant's examination remain positive, and reported approximately 1 months relief from the carpal tunnel injection, although his symptoms had returned. Dr. McDaid opined that the carpal tunnel was part of his clinical picture, and the claimant had overlying radicular symptoms. Based on the positive diagnostic injection, Dr. McDaid opined the claimant was a candidate for surgical intervention of the carpal tunnel. He sought pre-certification to perform this procedure, which was denied and appealed.

In his appeal, Dr. McDaid explained that while carpal tunnel syndrome does typically occur from repetitive tasks, that there were instances where carpal tunnel syndrome can be traumatically induced. Given the mechanism of the injury, mainly that it was gripping the steering wheel with both hands when he was struck head-on, Dr. McDaid opined that claimant’s injuries were causally related to the subject accident. He further noted that given claimant’s conservative care, and the persistent nature of the complaints, that no further conservative care was indicated and the claimant was a surgical candidate.

This surgery was awarded in a previously filed arbitration and ultimately performed on November 16, 2018.[1]

Claimant followed up with Dr. McDaid again on November 26, 2018 at which time he noted that his right hand was feeling a little bit better although he was still getting some numbness and tingling, but not as often. Claimant now noted that his left hand was now bothering him more than his right hand. He had gone to a few sessions of physical therapy for this hand but his complaints continued. Dr. McDaid's examination of claimant's left hand was positive for Tinel's and median nerve compression tests. Dr. McDaid assessed that claimant's left hand remained symptomatic and that he was a candidate for a left carpal tunnel release. Dr. McDaid sought precertification to proceed with claimant's surgery but was denied and appealed to no avail.

Findings and conclusions

PT and office visits, 1/11/19 to 4/4/19

Based upon my review of the evidence, and by a preponderance thereof, I find that clinically supported medical necessity has been established. The treatment in dispute consists of one PT treatment date on 1/11/19, and 5 office visits from 1/29/19[2] through 4/4/19 (including x-rays). These were denied based upon Dr. Berman’s IME and Dr. Lager’s IME Appeal, finding that the patient had reached MMI. I disagree with the IME termination of benefits. The IME findings were almost completely normal, other than reduced ranges of motion. This is in stark contrast to the findings of the treating providers, and the patient’s subjective complaints, which were consistent with objective findings, including MRI and EMG, as well as orthopedic and neurologic test results.

Proposed lumbar surgery

Based upon my review of the evidence, and by a preponderance thereof, I find that medical necessity and causation have been established. This patient was asymptomatic prior to this accident. Thus, any prior medical history is essentially irrelevant under the criteria of *Bowe*. He had a long course of conservative care, including chiropractic, and then pain management with epidural injections, with incomplete results. Despite this care, as well as passage of time and alteration of activity, his symptoms persisted. A repeat lumbar MRI revealed a broad disc bulge at L4-5, and a left sided disc herniation at L5-S1. Because of his failed nonoperative treatment and continued complaints of low back pain rated 8/10 radiating to both legs with numbness and tingling in both feet, Dr. Nguyen recommended this surgery. Dr. Lager noted decreased sensation on the right, tenderness and spasming, and an antalgic gait. Dr. Lager recommended an independent consultative opinion with film review for further determination.

Proposed left carpal tunnel surgery

Based upon my review of the evidence, and by a preponderance thereof, I find that medical necessity and causation have been established. This patient was asymptomatic prior to this accident. EMG confirmed bilateral carpal tunnel syndrome. He sustained a double crush injury in this head-on collision with airbag deployment. Dr. McDaid explained how gripping the steering wheel produced this injury and symptoms. He had prior conservative care, including PT, but his symptoms persisted. Tinel's and median nerve compression tests were positive. I accept the patient's explanation that his hands had been bothering him since the accident, but other injuries took precedence.

I note the vast disparity between claimant's medical evidence and opinions, and respondent's medical evidence and opinions. In this case, I choose to give controlling weight to the opinion of the treating physician, as the law permits me to do. 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 credible and reliable evidence of its medical value is enough to qualify the expense for PIP purposes. *Thermographic Diagnostics v. Allstate*, 125 *N.J.* 491 (1991). When there is a difference of medical opinion, generally, the opinion of the treating provider is afforded greater weight. *Mewes v. Union Bldg. & Constr. Co.*, 45 *N.J.Super.* 88 (App.Div.1957); *Abelit v. General Motors Corporation*, 46 *N.J. Super.* 475, 480 (App.Div.1957). Generally, the physician treating the patient is in a better position to express an opinion as to the cause and effect than one making an examination in order to give expert testimony. *Celeste v. Progressive Silk Finishing Co.*, 72 *N.J.Super.* 233 (App.Div.1962). *Craig & Pomeroy, New Jersey Auto Insurance Law (GANN, 2013)*, §7:2. Treating physicians enjoy wide discretionary latitude in determining the extent of treatment needed for a particular patient. It is not unusual to witness a genuine dichotomy of medical opinion as to the type and extent of treatment needed for a particular injury. *Miskofsky v. Ohio Cas. Ins. Co.*, 203 *N.J.Super.* 400, 410 (LawDiv.1984). While it is true that the treating physician's opinion is not automatically accorded conclusive weight, *Black & Decker Disability Plan v. Nord* 123 *S. Ct.* 1965 (2003), (relating to ERISA Plans), it is accorded an appropriate measure of deference.

N.J.A.C. 11:3-5.6(e) provides that the decision of the dispute resolution professional "may include attorney's fees for a successful claimant in an amount consonant with the award and with Rule 1.5 of the Supreme Court's Rules of Professional Conduct." The word "consonant" has been defined to mean "consistent" or "compatible." *Coalition of Health Care v. Dpt. of Banking*, 323 *N.J.Super.* 207 (App.Div.1999). It also means that I may award less than the amount sought even if I determine that the hourly rate and number of hours billed is reasonable.

In determining the reasonableness of an attorney's fee award, the threshold issue is whether the party seeking the fee prevailed in the litigation. In that regard, the party must establish that the lawsuit was

causally related to securing the relief obtained; a fee award is justified if the party's efforts are a necessary and important factor in obtaining the relief. *Litton Industries, Inc. v. IMO Industries, Inc.*, 200 *N.J.* 372 (2009).

The "lodestar" methodology to be applied in determining a reasonable counsel fee involves an examination of the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *R.M. v. Supreme Court of New Jersey*, 190 *N.J.* 1 (2007).

I have also considered the criteria set forth in *Scullion v. State Farm*, 345 *N.J.Super.* 431 (App.Div.2001).

In this case, claimant was a successful party. I have considered the complexity of the case, the criteria set forth in *R.P.C.* 1.5, the challenge of the hourly rate and number of hours billed and the fact that an award of attorney's fees is intended to be compensatory, not punitive, and therefore determine that a counsel fee award of $1,800.00 is consonant with the amount awarded as well as the complexity of the case, and is reasonable and appropriate. This was a somewhat complex case with multiple issues. I have adjusted for "anticipated" services, which appear to be overestimated. I have also disallowed time for preparation of the fee certification. I have adjusted the hourly rate for this informal, out of court proceeding. Having considered all of these criteria, my attorney's fee award reflects a downward adjustment in the amount claimed, pursuant to the arguments presented by defense counsel.

The $228.90 filing fee is also awarded.

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[1] See my Award in *Seaview Orthopedics a/s/o J.L. v. Allstate New Jersey*, NJ 1721693 (Forthright March 2, 2018).

[2] According to claimant, this was the first office visit that was denied.

Therefore, the DRP ORDERS:

Disposition of Claims Submitted

1. Medical Expense Benefits: Awarded

Medical Provider	Amount Claimed	Amount Awarded	Payable To
Seaview Orthopaedics	$762.17	$762.17	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:$ 1,800.00

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

Entered in the State of New Jersey

Robert C. LaSalle, Esq.
Dispute Resolution Professional

Date:08/26/19