
In the Matter of the Arbitration between:

Contemporary Orthopedics PLLC /
Applicant_ 1
(Applicant)

- and -

Allstate Property and Casualty
Insurance Company
(Respondent)

AAA Case No. 412010028218
AAA Assessment No. 17 991 15007 10
Applicant's File No.
Insurer's Claim File No. 0158609644J48

ARBITRATION AWARD

I, Maria G. Schuchmann, Esq., the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD:**

Injured Person(s) hereinafter referred to as: Claimant

1. Hearing(s) held on

☒ 08/02/10

and declared closed by the arbitrator on 8/2/10.

Jennifer Howard, Esq participated in person for the Applicant.
Diane Leahy participated by telephone for the Respondent.

2. The amount claimed in the Arbitration Request, \$6,706.76, was AMENDED and permitted by the arbitrator at the oral hearing. (Amendments, if any, set forth below).

Applicant has recalculated the proper fee schedule amount. The new amount at issue is \$4,665.54.

STIPULATIONS were not made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether a left shoulder surgery performed on claimant as a result of injuries allegedly sustained in a motor vehicle accident was medically necessary.

4. Findings, Conclusions, and Basis Therefor

Claimant was involved in a motor vehicle accident on January 4, 2010. On March 30, 2010 he saw Dr. Ackerman complaining of pain in his left shoulder despite having received physical therapy. That examination that was positive for tenderness in the left AC joint and greater tuberosity and decreased ranges of motion with a popping sensation. While a prior MRI showed only tendinopathy, it was Dr. Ackerman's opinion that, clinically, Claimant suffered from a labral tear.

As a result, Claimant underwent a left shoulder arthroscopy on April 1, 2010. The report of that surgery indicated that he was, in fact, suffering from a labral tear, which was repaired by Dr. Ackerman.

Respondent has denied payment for the surgery based upon a peer review by Dr. Emmanuel that found that the surgery was not medically necessary. In her report she based her opinion mainly upon the results of the MRI, which failed to indicate the presence of a tear. In addition, she noted that there were no subjective complaints or anything on clinical evaluation suggestive of a need for surgery.

After a review of all of the evidence presented I find that the surgery at issue was medically necessary. In this case, the MRI was clearly wrong based upon the post-operative Diagnosis in the operative report. In addition, Claimant's complaints, coupled with the popping and decreased ranges of motion were indicative of a tear.

Accordingly, Applicant is awarded \$4,665.54 plus applicable interest computed from June 14, 2010. Applicant is also awarded statutory attorneys' fees on the amount awarded herein plus interest, as well as return of the filing fee.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

Accordingly, the applicant is AWARDED the following:

A.

Benefits	Amount Claimed	Amount Awarded
Health Service Benefits	4,665.54	4,665.54

Totals:	\$4,665.54	\$4,665.54
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- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 06/14/2010, which is a relevant date only to the extent set forth below.)

Applicant is awarded \$4,665.54 plus applicable interest computed from June 14, 2010.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below.

Applicant is also awarded statutory attorneys' fees on the amount awarded herein plus interest.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Suffolk.

I, Maria G. Schuchmann, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

8/10/10
(Dated)



(Maria G. Schuchmann, Esq.)

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.