FORTHRIGHT

In the Matter of the Arbitration between

Fort Lee Rehab, LLC a/s/o J.C.

CLAIMANT(s),

v.

Forthright File No: NJ1406001562849
Proceeding Type: In Person
Insurance Claim File No: 0380279970101044
Claimant Counsel: Law Offices of Sean T. Hagan
Claimant Attorney File No: 14-5656
Respondent Counsel: Chierici, Chierici & Smith
Respondent Attorney File No:
Accident Date: 01/24/2013

GEICO Insurance Company

RESPONDENT(s).

APPELLATE AWARD

We, the Dispute Resolution Professionals 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 reviewed and considered the submitted documents, hereby render the following Determination:

Hereinafter, the injured person(s) shall be referred to as: the "Injured Party".

For the reasons set forth herein, this Panel ORDERS that:

1. ☐ The Award reviewed is **AFFIRMED** in its entirety.

2. ☒ The Award reviewed is **VACATED** and **CORRECTED** for reasons set forth below.

3. ☐ The Award reviewed is **MODIFIED** for reasons set forth below.

Findings of Fact and Conclusions of Law

The within Appeal is brought by Respondent pursuant to New Jersey No-Fault Arbitration Rule 25. Such rule provides that an Award may be vacated, modified, or corrected pursuant to *N.J.S.A. 2A:23A-13*. The statute aforesaid, entitled ***Application to Court for Review of Award***, provides as follows:

> a. A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection d. of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.
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> b. In considering an application for vacation, modification or correction, a decision of the umpire on the facts shall be final if there is substantial evidence to support that decision; provided, however, that when the application to the court is to vacate the award pursuant to paragraph (1), (2), (3), or (4) of subsection c., the court shall make an independent determination of any facts relevant thereto de novo, upon such record as may exist or as it may determine in a summary expedited proceeding as provided for by rules adopted by the Supreme Court for the purpose of acting on such applications.
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> c. The award shall be vacated on the application of a party who either participated in the alternative resolution proceeding or was served with a notice of intention to have alternative resolution if the court finds that the rights of that party were prejudiced by:
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> (1) Corruption, fraud or misconduct in procuring the award;
>
> (2) Partiality of an umpire appointed as a neutral;
>
> (3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;
>
> (4) Failure to follow the procedures set forth in this act, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or
>
> (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.
>
> d. The award shall be vacated on the application of a party who neither participated in the proceeding nor was served with a notice of intention to have alternative resolution if the court finds that:
>
> (1) The rights of that party were prejudiced by one of the grounds specified in subsection c. of this section; or
>
> (2) A valid agreement to have alternative resolution was not made; or

(3) The agreement to have alternative resolution had not been complied with; or

(4) The claim was barred by any provision of this act.

e. The court shall modify the award if:

(1) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) The umpire has made an award based on a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted;

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy; or

(4) The rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

f. Whenever it appears to the court to which application is made, pursuant to this section, either to vacate or modify the award because the umpire committed prejudicial error in applying applicable law to the issues and facts presented for alternative resolution, the court shall, after vacating or modifying the erroneous determination of the umpire, appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire. The court shall then confirm the award as modified."

An award was issued by DRP Anthony M. Aloi, Esq. in this matter on May 31, 2015, wherein DRP Aloi awarded medical benefits to the Claimant on account of medical treatment provided by the Claimant. In awarding such medical benefits, the DRP found that while Respondent GEICO asserted that the policy of automobile liability insurance issued to the Injured Party was subject to a reduced PIP benefits coverage limitation of $15,000.00, Respondent GEICO failed to establish, by a preponderance of the evidence, that the Injured Party, as Respondent's insured, had affirmatively chosen the reduced PIP benefits coverage option in writing. On the basis of the foregoing, DRP Aloi determined that notwithstanding the Respondent's issuance of a renewal policy containing a $15,000.00 PIP benefits coverage limitation applicable to the period within which the claimed loss occurred, the Injured Party was nonetheless entitled to a PIP benefits coverage limitation of $250,000.00.

By way of the within proceeding, Respondent asserts that the DRP below improperly and unlawfully reformed the contract of insurance which existed between GEICO and its insured to provide for a PIP benefits coverage limitation of $250,000.00, and not the $15,000.00 PIP benefits coverage limitation set forth in the policy of insurance issued by the Respondent.[1] On the basis of the foregoing, it is the Respondent's contention that the DRP committed prejudicial error by erroneously applying law to the issues and facts presented for determination.

This Appellate Panel has carefully scrutinized DRP Aloi's May 31, 2015 Award issued in the within matter, and upon such pain of scrutiny, finds and determines that DRP Aloi did erroneously apply the applicable law

[1] It is uncontroverted that the $15,000.00 PIP policy coverage limitation was exhausted as of the time of the conduct of the oral hearing in the within matter.

in determining that the Respondent's insured, the Injured Party herein, was entitled to receive PIP medical benefits coverage in an amount up to $250,000.00.

Further still, the Appellate Panel further finds that what is patently clear from the evidence appearing of record in the within dispute is that – regardless of whether it was properly done or not – Respondent issued a policy with $15,000 in medical expense benefits. Claimant contends this was improper, and Patient is entitled to $250,000 in benefits. Effectively, then, what Claimant is seeking is reformation of the policy to grant benefits greater than what were issued. Reformation is not within the jurisdiction of this arbitration forum.

This Appellate Panel finds that this arbitration forum is not a tribunal of general jurisdiction. The jurisdiction over disputes here cognizable is conferred by operation of N.J.A.C. §11:3-5.1 *et seq*. which grants jurisdiction over "PIP disputes." Pursuant to N.J.A.C. §11:3-5.2, a "PIP dispute" is defined thusly:

> "'PIP dispute' includes, but is not limited to, matters concerning:
>
> "1. Interpretation of the insurance contract's PIP provisions;
>
> "2. Whether the medical treatment or diagnostic tests are in accordance with the provisions of applicable statutes and rules for the basic and standard policies and in compliance with the terms of the policy;
>
> "3. Eligibility of the treatment or service for compensation or reimbursement, including whether the injury is causally related to the accident and the application of deductible and copayment provisions;
>
> "4. Eligibility of the provider performing the service to be compensated or reimbursed under the terms of the policy and the provisions of N.J.A.C. 11:3-4, and including whether the provider is licensed or certified to perform the treatment or service;
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> "5. Whether the treatment was actually performed;
>
> "6. Whether the diagnostic tests performed are recognized by the Professional Boards in the Division of Consumer Affairs, Department of Law and Public Safety, administered in accordance with their standards, and approved by the Commissioner at N.J.A.C. 11:3-4;
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> "7. The necessity and appropriateness of consultation with other health care providers;
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> "8. Disputes involving the application of, or adherence to, the automobile insurance medical fee schedule at N.J.A.C. 11:3-29;
>
> "9. Whether the treatment or service is reasonable, necessary and in accordance with medical protocols adopted by the Commissioner at N.J.A.C. 11:3-4; or
>
> "10. Amounts claimed for PIP income continuation benefits, essential services benefits, death benefits and funeral expense benefits."

In ***Open MRI v. Imaging of Rochelle Park v. Mercury Uns. Grp.***, 421 N.J.Super. 160 (App. Div. 2011), the Appellate Division held that "[i]n the present matter, we find a right of appeal to exist insofar as it is based on the Law Division judge's determination to reform the insurance policy underlying Open MRI's claim. "**The DRP was correct in concluding that she lacked the statutory authority to order reformation"**. See, ***Endo Surgi Ctr., P.C. v. Liberty Mut. Ins. Co.***, 391 N.J. Super. 588, 594 (App. Div. 2007) (emphasis added).

This Appellate Panel further finds that because policy reformation constituted the relief sought by the Claimant herein from the outset, its institution of an arbitration proceeding pursuant to the APDR Act was ineffective. As a practical matter, Claimant's reformation claim could only be considered, if at all, by the Superior Court of New Jersey. This Appellate Panel thus finds that when such relief is sought through arbitration, contract reformation is beyond the power of the DRP to award.

Claimant characterizes the nature of the within dispute as merely determining whether Respondent has sufficiently proven what benefits the insured chose. This Appellate Panel finds, however, that the foregoing is nothing more than an exercise in semantics, and is accordingly rejected.

Moreover, the Appellate Panel finds that in ***Baldassano v. High Point Ins. Co***., 396 N.J.Super. 448 (App. Div. 2007) the court addressed whether an insured must affirmatively re-elect reduced benefits for each renewal period or whether reduced limits – once chosen by the insured – may renew at those reduced rates. The court held that "[t]he statute provides that '[t]he applicant shall indicate the options elected on the coverage selection form which shall be signed and returned to the insurer.' N.J.S.A. 39:6A-23(a). Upon a policy renewal, the insured is not obligated to return the completed and signed coverage unless the insured elects to alter the coverage. N.J.A.C. 11:3-15.7; See also ***Bruce v. Aetna***, 238 N.J. Super. at 506, 570 A.2d 49 (holding that an insured's failure to return a properly executed selection form on renewal should be construed as the insured's intent to retain the same coverage without change). The Appellate Panel finds that Respondent GEICO provided for inclusion in the record the Injured Party's duly executed PIP medical benefits policy coverage election form. No proofs of any kind appear of record of the Injured Party's attempt to modify its prior election of a $15,000.00 PIP medical benefits policy coverage limitation. Thus, as a matter of law, the Appellate Panel finds that the Injured Party is constrained to a $15,000.00 PIP medical benefits policy coverage limitation as elected at the time of policy inception.

For all of the foregoing reasons, the Appellate Panel determines that the May 31, 2015 award of DRP Alio is hereby VACATED IN ITS ENTIRETY (inclusive of any award of counsel fees and costs), and that Claimant's demands for the award of PIP medical expense benefits, as set forth in the Demand for Arbitration are DENIED IN THE ENTIRETY.

This Panel further Orders that:

If modifying any awarded amounts, please complete the table below.

Medical Provider	Amount Claimed	Amount Awarded	Amount Modified To	Payable To
Fort Lee Rehab, LLC	$2,502.19	$2,502.19	0.00	

Attorney's Fees and Costs

☒ No costs or fees are awarded on this APPEAL.

This Award is in **FULL SATISFACTION** of the APPEAL submitted to this Dispute Resolution Panel.

Entered in the State of New Jersey

Honorable Scott G. Sproviero
Dispute Resolution Professional

Date: 09/24/15

Entered in the State of New Jersey

Joseph A. Tamburino, Esq.
Dispute Resolution Professional

Date: 09/24/15

Entered in the State of New Jersey

Christopher M. Carnelli, Esq.
Dispute Resolution Professional

Date: 09/24/15