

Arbitration Award

Instructions: The Neutral Arbitrator must serve the Award form on the parties and the OIA within fifteen business days of the date of the closing of most arbitration hearings. (If there are three arbitrators, this Award must be signed by at least two of them.) See Rules 37 - 39.

Arbitration Name: [REDACTED] Arbitration Number: 14073

The Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

Summary Judgment
An arbitration hearing was held on MONDAY, JANUARY 9, 2017.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **(check one)**:

The Claimant(s) is entitled to \$8,340.00.

Or:

The Respondent(s) is entitled to _____.

The hearing was conducted (check one):

in person by telephone video conference by documents only

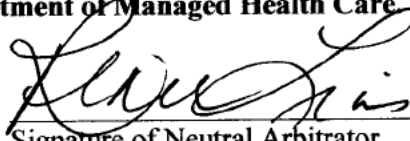
Were attorney's fees awarded? yes no

If yes, how much and to whom? _____

The reasons for this decision are attached.

(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care



Signature of Neutral Arbitrator

01/09/17

Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

Renee Lias, Attorney, SB #124581
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Castro Valley, CA 94546
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510-427-5971
510-728-1377(Fax)

ARBITRATION AWARD

ARBITRATION NAME: [REDACTED]

ARBITRATION NUMBER: 14073

DATE: JANUARY 9, 2017

Pursuant to Rule 38 below are the findings of fact and conclusions of law consistent with California Code of Civil Procedure Section 437c or Section 632.) for the Arbitration Award

On December 14, 2016, the Arbitrator sent a letter to both parties advising the parties that the hearing on the summary judgment would be held telephonically on Monday, January 9, 2017 at 10:00 a.m.

A telephone hearing on the summary judgment filed by Claimant, Kaiser Foundation Health Plan (hereinafter "Kaiser) was held on Monday, January 9, 2017. Kaiser appeared. Respondent, [REDACTED] did not appear.

Respondent [REDACTED] was served with the Summary Judgment motion on December 28, 2016.

Respondent [REDACTED] did not serve an opposition to the Summary Judgment Motion.

FINDINGS OF FACT

Respondent was a member of Kaiser and received medical treatment from Kaiser on February 23 and 24, 2015 for injuries sustained in a motor vehicle accident that occurred on February 23, 2015. The motor vehicle accident was caused by the negligence of a third party.

The costs of medical treatment provided by Kaiser was \$14,110.45.

On May 17, 2015, ██████ received a settlement from Progressive Insurance in the amount of \$16,680. ██████ did not have an attorney in pursuing and reaching the aforementioned settlement.

CONCLUSIONS OF LAW

California Code of Civil Procedure (CCP) 437c states in pertinent part that,

“(a) (1) A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

...

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact. . .”.

In this case, respondent did not provide any defense to this action and did not oppose the motion for summary judgment. CCP section 437c provides that a motion for summary judgment shall be granted if all the papers show there are no triable issues of material facts in dispute. Based on the papers submitted and review of the record, there is no dispute as to the following material facts. (1) ██████ was a member of Kaiser (2) ██████ was injured in a motor vehicle accident as the result of the negligence of a third party. (3) ██████ received medical treatment from Kaiser as a result of injuries he sustained in the motor vehicle accident. (4) The medical costs from the medical treatment from totaled \$14,110.45. (5) ██████ without the assistance of an attorney settled his personal injury claim with Progressive Insurance in the amount of \$16,680.

Pursuant to provisions in the Evidence of Coverage (EOC) between Kaiser and ██████ if a

settlement is obtained based on the negligence of a third party, the member [REDACTED] is liable for payment to Kaiser for costs for the medical services received. EOC provides in pertinent part that,

“If you obtain a judgment or settlement from or behalf of a third party who allegedly caused an injury or illness for which you have received Covered services, you must pay [Kaiser] for . . . services . . . “. The amount owed is subject to the provisions in California Civil Code section 3040.

California Civil Code section 3040 provides in pertinent that,

“a) No lien asserted by a licensee of the Department of Managed Care or the Department of Insurance, and no lien of a medical group or an independent practice association, to the extent that it asserts or enforces a lien, for the recovery of money paid or payable to or on behalf of an enrollee or insured for health care services provided under a health care service plan contract or a disability insurance policy, when the right of the licensee, medical group, or independent practice association to assert that lien is granted in a plan contract subject to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or a disability insurance policy subject to the Insurance Code, may exceed the sum of the reasonable costs actually paid by the licensee, medical group, or independent practice association to perfect the lien and one of the following:

(1) For health care services not provided on a capitated basis, the amount actually paid by the licensee, medical group, or independent practice association pursuant to that contract or policy to any treating medical provider.

(2) For health care services provided on a capitated basis, the amount equal to 80 percent of the usual and customary charge for the same services by medical providers that provide health care services on a noncapitated basis in the geographic region in which the services were rendered.

(b) If an enrollee or insured received health care services on a capitated basis and on a noncapitated basis, and the licensee, medical group, or independent practice association that provided the health care services on the capitated basis paid for the health care services the enrollee received on the noncapitated basis, then a lien that is subject to subdivision (a) may not exceed the sum of the reasonable costs actually paid to perfect the lien, and the amounts determined pursuant to both paragraphs (1) and (2) of subdivision (a).

. . .

(d) If the enrollee or insured did not engage an attorney, then the lien subject to subdivision (a) may not exceed the lesser of the following amounts:

(1) The maximum amount determined pursuant to subdivision (a) or (b), whichever is applicable.

(2) One-half of the moneys due to the enrollee or insured under any final judgment, compromise, or settlement agreement.

In this case, Respondent [REDACTED] was involved in a motor vehicle accident on February 23, 2015. This accident was caused by the negligence of a third party. [REDACTED] received medical treatment and services from Kaiser on February 23 and 24, 2015 for injuries sustained in the motor vehicle accident. [REDACTED] settled with Progressive Insurance in an amount of \$16,680. This settlement was obtained without an attorney. The EOC provides that when there is a settlement as the result of a third party negligence claim, the member [REDACTED] is required to reimburse the medical provider (Kaiser) for the costs for medical treatment and services received. Pursuant to EOC and California Civil Code section 3040, [REDACTED] is liable to reimburse Kaiser one-half of the settlement he received.

There are no material facts in dispute. Accordingly, Kaiser's summary judgment is granted. [REDACTED] is liable to reimburse Kaiser in the amount of \$8,340.



Renee Lias

Neutral Arbitrator

January 9, 2017

Arbitration Award

Instructions: The Neutral Arbitrator must serve the Award form on the parties and the OIA within fifteen business days of the date of the closing of most arbitration hearings. (If there are three arbitrators, this Award must be signed by at least two of them.) See Rules 37 - 39.

Arbitration Name: _____ **Arbitration Number:** _____

The Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

A motion for summary judgment
An ~~arbitration~~ hearing was held on Tuesday, October 3, 2017.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **(check one)**:

The Claimant(s) is entitled to judgment of \$11,741.05 against

Or:

The Respondent(s) is entitled to _____

The hearing was conducted **(check one)**:

in person by telephone video conference by documents only

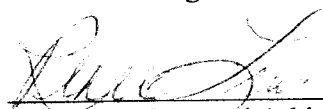
Were attorney's fees awarded? yes no

If yes, how much and to whom? _____

The reasons for this decision are attached.

(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.



Signature of Neutral Arbitrator *Ronald Lewis*

10/04/2017
Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

Arbitration Award

Instructions: The Neutral Arbitrator must serve the Award form on the parties and the OIA within fifteen business days of the date of the closing of most arbitration hearings. (If there are three arbitrators, this Award must be signed by at least two of them.) See Rules 37 - 39.

Arbitration Name: _____ Arbitration Number: _____

The Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

summary judgment
An arbitration hearing was held on Tuesday, October 3, 2017.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **(check one)**:

The Claimant(s) is entitled to judgment of \$12,667.67 against.

Or:

The Respondent(s) is entitled to _____.

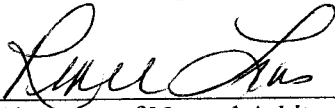
The hearing was conducted **(check one)**:
 in person by telephone video conference by documents only

Were attorney's fees awarded? yes no
If yes, how much and to whom? _____

The reasons for this decision are attached.

(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.


Signature of Neutral Arbitrator Renee Luss

10-04-2017
Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

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ARBITRATION AWARD

ARBITRATION NAME:

ARBITRATION NUMBER:

DATE: OCTOBER 4, 2017

Pursuant to Rule 38 below are the findings of fact and conclusions of law consistent with California Code of Civil Procedure Section 437c or Section 632.) for the Arbitration Award

On August 31, 2017, Respondents, _____ were served with the Notice of Motion for Summary Judgment, Memorandum of Points & Authorities, and Exhibits. The Notice indicated the hearing date, time, and location for Tuesday, October 3, 2017 at 1:30 p.m., telephonically.

Respondents were served with summary judgment documents on August 31, 2017.

Respondents did not serve an opposition to the Summary Judgment Motion.

Claimant filed a Reply on September 29, 2017.

A telephone hearing on the summary judgment filed by Claimant, Kaiser Foundation Health Plan (hereinafter "Kaiser") was held on Tuesday, October 3, 2017 at 1:30 p.m. Kaiser appeared through its counsel, Michael Karatov.

Respondents did not appear.

The Arbitrator called _____ at the telephone number of record at approximately 1:31 p.m. and a recording indicated that no incoming calls could be accepted. There was no telephone call by _____ to the Arbitrator.

The Arbitrator called . at the telephone number of record at approximately 1:32 p.m. and a recording indicated that no incoming calls could be accepted. There was no telephone call by to the Arbitrator.

FINDINGS OF FACT

Respondents were members of Kaiser Permanente Health Plan (Kaiser) and received medical treatment beginning July 18, 2015 for injuries sustained in a motor vehicle accident that occurred on July 18, 2015. The motor vehicle accident was caused by the negligence of a third party.

The costs of medical treatment for was \$49,110.17. received medical treatment various dates beginning July 18, 2015 through October 2016. had out of pocket expenses in the form of co-payments totaling \$4500 for 2015 and \$425.62 in 2016.

The costs of medical treatment for was \$90, 505.72. received medical treatment various dates beginning July 18, 2015 through December 2015. out of pocket expenses in the form of co-payments totaled \$4,500.

On April 12, 2016, received a settlement from Mercury Insurance in the amount of \$50,000 and received a settlement from Mercury Insurance in the amount of \$50,000. Respondents were represented by attorney Christopher Landis.

CONCLUSIONS OF LAW

California Code of Civil Procedure (CCP) 437c states in pertinent part that,

“(a) (1) A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

...

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact. . .”.

In this case, respondents did not provide any defense to this action and did not oppose the motion for summary judgment. CCP section 437c provides that a motion for summary judgment shall be granted if all the papers show there are no triable issues of material facts in dispute. Based on the papers submitted and review of the record, there is no dispute as to the following material facts. (1) Respondents _____ were members of Kaiser (2) Respondents were injured in a motorcycle/auto accident as the result of the negligence of a third party. (3) Respondents received medical treatment as a result of the injuries they sustained in the accident. (4) The medical costs to Kaiser from the medical treatment totaled \$49,110.17 for _____ and \$90,505.72 for _____ (5) Respondents with the assistance of an attorney settled their personal injury claims with Mercury Insurance in the amount of \$50,000 each.

Pursuant to provisions in the Evidence of Coverage (EOC) between Kaiser and Respondents, if a settlement is obtained based on the negligence of a third party, the members (_____ and _____ are liable for payment to Kaiser for costs for the medical services received. EOC provides in pertinent part that,

“If you obtain a judgment or settlement from or behalf of a third party who allegedly caused an injury or illness for which you have received Covered services, you must pay [Kaiser] for . . . services . . . “. The amount owed is subject to the provisions in California Civil Code section 3040.

California Civil Code section 3040 provides in pertinent that,

“a) No lien asserted by a licensee of the Department of Managed Care or the Department of Insurance, and no lien of a medical group or an independent practice association, to the extent that it asserts or enforces a lien, for the recovery of money paid or payable to or on behalf of an enrollee or insured for health care services provided under a health care service plan contract or a disability insurance policy, when

the right of the licensee, medical group, or independent practice association to assert that lien is granted in a plan contract subject to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or a disability insurance policy subject to the Insurance Code, may exceed the sum of the reasonable costs actually paid by the licensee, medical group, or independent practice association to perfect the lien and one of the following:

(1) For health care services not provided on a capitated basis, the amount actually paid by the licensee, medical group, or independent practice association pursuant to that contract or policy to any treating medical provider.

(2) For health care services provided on a capitated basis, the amount equal to 80 percent of the usual and customary charge for the same services by medical providers that provide health care services on a noncapitated basis in the geographic region in which the services were rendered.

(b) If an enrollee or insured received health care services on a capitated basis and on a noncapitated basis, and the licensee, medical group, or independent practice association that provided the health care services on the capitated basis paid for the health care services the enrollee received on the noncapitated basis, then a lien that is subject to subdivision (a) may not exceed the sum of the reasonable costs actually paid to perfect the lien, and the amounts determined pursuant to both paragraphs (1) and (2) of subdivision (a).

(c) If the enrollee or insured engaged an attorney, then the lien subject to subdivision (a) may not exceed the lesser of the following amounts:

(1) The maximum amount determined pursuant to subdivision (a) or (b), whichever is applicable.

(2) One-third of the moneys due to the enrollee or insured under any final judgment, compromise, or settlement agreement.

(d) If the enrollee or insured did not engage an attorney, then the lien subject to subdivision (a) may not exceed the lesser of the following amounts:

(1) The maximum amount determined pursuant to subdivision (a) or (b), whichever is applicable.

(2) One-half of the moneys due to the enrollee or insured under any final judgment, compromise, or settlement agreement.

(e) Where a final judgment includes a special finding by a judge, jury, or arbitrator, that

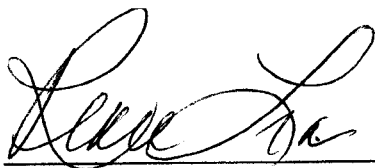
the enrollee or insured was partially at fault, the lien subject to subdivision (a) or (b) shall be reduced by the same comparative fault percentage by which the enrollee or insured's recovery was reduced.

(f) A lien subject to subdivision (a) or (b) is subject to pro rata reduction, commensurate with the enrollee's or insured's reasonable attorney's fees and costs, in accordance with the common fund doctrine.

Section 3040 limits Kaiser's recover to no more than 1/3 of the settlement. Since Kaiser bills on a capitated basis, the lien must also be reduced by 20% as set out in section 3040(a)(2). The reduction does not apply to this case as it would exceed the total recovery.

In this case, Respondents were involved in a motor vehicle accident on July 18, 2015. This accident was caused by the negligence of a third party. Respondents received medical treatment and services for injuries sustained in the motor vehicle accident. Respondents settled their claims in an amount of \$50,000 each. This settlement was obtained with an attorney. The EOC provides that when there is a settlement as the result of a third party negligence claim, the members () are required to reimburse the medical provider (Kaiser) for the costs for medical treatment and services received. The EOC provides that the member will be credited for Cost of Share. Pursuant to EOC and California Civil Code section 3040, is liable to reimburse Kaiser \$12,667.67 of the settlement received (1/3 of the settlement of \$50,000 totals \$16,666.67 minus credit of \$4500 Cost of Share) and is liable to reimburse Kaiser \$11,741.05 of the settlement received (1/3 of settlement of \$50,000 totals \$16,666.67 minus credit of \$4,925.62 Cost of Share).

There are no material facts in dispute as set forth above. Accordingly, Kaiser's summary judgment is granted. is liable to reimburse Kaiser in the amount of \$12,667.67. is liable to reimburse Kaiser in the amount of \$11,741.05.



Renee Lias

Neutral Arbitrator

October 4, 2017