

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: KAISER [REDACTED] Arbitration Number: 14060

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

An arbitration hearing was held on FEBRUARY 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 NOTHING.

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

02/15/17
Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

KAISER & [REDACTED]

Arbitration No. 14060

STATEMENT OF DECISION

This matter was submitted for Decision at the time and place of hearing on April 3, 2017 in the form of a Motion for Summary Judgment. The Respondent [REDACTED] failed to appear at the (telephone) hearing, or to otherwise participate, or communicate any objection, throughout the course of this Arbitration proceeding. If recovery of reimbursement was an available sanction for failing and refusing to participate in arbitration proceedings, then recovery in this matter may have been Awarded. However, I was unable to Award any recovery to the Claimant for the following reasons:

1. The submission of evidence in support of the claim for reimbursement was entirely based upon the Declaration of Counsel, and as to several material issues, based only upon his "information & belief";
2. From that Declaration (and attachments) I found no evidence of the fact of injury or the circumstances of the alleged motor vehicle collision; no medical report or medical records connecting the "Consolidated Statement of Benefits" with the alleged motor vehicle collision; no evidence of the Respondent's acknowledgment that any of his treatment was the result of the Third Party claim; no evidence that the statement of benefits was submitted to the Third Party carrier in support of the alleged settlement payment, or to what extent that statement supported the alleged settlement payment; no evidence of the fact and amount of payment except for the copy of a single hearsay email response;

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Arbitration Name: KAISER & **Arbitration Number:** 14317

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

An arbitration hearing was held on 05/10/17

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

The Claimant(s) is entitled to \$33,333.33

Or:

The Respondent(s) is entitled to _____

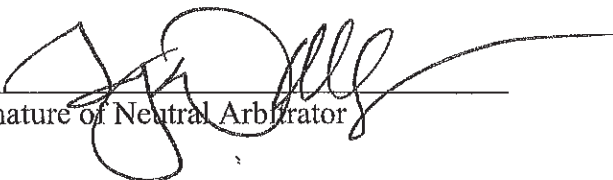
The hearing was conducted **(check one)**:
 in person by telephone video conference by documents only

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

05/10/17

Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

STATEMENT OF DECISION

This matter was submitted for Decision on May 10, 2017 at the conclusion of the scheduled telephone conference call hearing at which Counsel for the Claimant & Respondent appeared. Based upon the submitted written briefs and argument presented at the hearing, I found the Claimant Kaiser Foundation Health Plan entitled to an Award in the amount of \$33,333.33 for the following reasons:

1. The Respondent suffered traumatic physical injury as the result of the negligence of a third party;

2. The Respondent obtained medical care and treatment ("benefits") for this injury from Claimant Kaiser in the amount of \$256,116.77;

3. The Respondent recovered the liability insurance policy limits of the third party in the amount of \$100,000;

4. The Claimant Kaiser Foundation Health benefit plan provides a right to recover charges incurred from any judgment or settlement obtained from a third party who caused an injury or illness;

5. Although the Claimant contends that she was not "made whole" by the recovery from the third party insurance recovery, the Plan Booklet setting forth the medical benefits provided to the Respondent by the Claimant contains language sufficient to abrogate the "made whole" equitable doctrine;

6. By application of California Civil Code Section 3040 c (2), Claimant is entitled to 1/3 of the total recovery, or \$33,333.33;

7. I did not find that the benefit plan contract should be construed to limit this recovery claim to the annual "out of pocket" maximum deductible limit.

Corrected 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: Kaiser & Arbitration Number: _____

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

An arbitration hearing was held on (Final MSJ Submission) July 23, 2018.

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

The Claimant(s) is entitled to \$40,805.

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

07/25/18

Date

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

KAISER &

CORRECTED STATEMENT OF DECISION

Kaiser Foundation Health Plan ("Claimant") and ("Respondent") having jointly submitted cross-motions for Summary Judgment in this Arbitration proceeding for the recovery of reimbursement arising from the 2014 & 2015 Kaiser Foundation Health Plan ("Plan"), and the matters having been briefed, supported by a Joint Stipulation of Facts and Exhibits, orally argued, further briefed and finally submitted for Decision on July 22, 2018:

FINDINGS:

Among the stipulated and undisputed facts and documents submitted in support of Claimant's Motion For Summary Judgment (and Respondent's Motion For Summary Judgment as well) are the Plan Language documents (Claimant's Exhibit G) for the relevant years of 2014 and 2015. The Plan provides at page 79 the following:

"You must also pay us Charges for such Services if you receive or are entitled to receive a recovery from any insurance for an injury or illness alleged to be based on a third party's fault, such as from uninsured or underinsured motorist coverage."

Further at page 79, the Plan also provides:

"We will reduce our lien pro rata to share in your legal fees and costs under the common fund doctrine. This net lien will not be more than (1) one-third of your total gross recovery from all third-party sources if you engaged an attorney to obtain that recovery; or (2) one half of such recovery if you did not."

Also stipulated and undisputed are:

The Respondent was covered by the Plan (Exhibit G) during 2014 and 2015;

The Respondent was allegedly injured by a third party on February 21, 2014;

The Respondent received medical treatment from Claimant for those injuries in the total amount of \$79,682.50;

The Respondent presented evidence of those charges to his uninsured motorist carrier (State Farm) and recovered \$250,000;

Upon these facts, Claimant has sought recovery of \$53,121.67, or \$52,516.67 (depending on calculation of deductible payments) under Federal Law, or recovery under California Law (subject to Civil Code Section 3040) of \$41,892.30, or \$41,183.33 (depending on calculation of deductible payments).

Respondent's Cross-Motion and Defense is that Federal Law does not apply, and that recovery is not permitted under California Law.

CONCLUSIONS:

I find that Claimant is entitled to seek reimbursement pursuant to the terms of it's Plan as a matter of contract;

I find that the Plan is replete with explicit references to FEHB (Federal Employee Health Benefits), the U.S. Office of Personnel Management, FEHB Coverage and other references to apparent Federal Law jurisdiction.

I find that Claimant is not barred from seeking this contractual reimbursement under any of the theories or provisions of California Law cited by Respondent, including Insurance Code Section 10270.98; General Principles of Subrogation; seeking Subrogation against its own insured; not being a party to the Uninsured Motorist contract; the Doctrine of Superior Equities; or, the Plan language regarding the annual limits of out-of-pocket costs.

Finally, I find that a determination of whether Federal or State Law applies is unnecessary. I have determined that this matter is a contractual claim for reimbursement, that it is not barred by California law, and I find that Claimant is entitled to a recovery from the Respondent in the amount of \$40,805., and have accordingly entered my Arbitration Award in that amount.

July 25, 2018

Gregory D Walker, Arbitrator