FSCO A99–001093

BETWEEN:

SAVITRI RAMBALLE

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Eban Bayefsky

Heard: December 4 and 5, 2000, at the Offices of the Financial Services Commission of Ontario in Toronto.

Appearances: David F. Longley for Ms. Ramballe
Michael P. Taylor for State Farm Mutual Automobile Insurance Company

Issues:

The Applicant, Savitri Ramballe, was injured in a motor vehicle accident on May 12, 1998. She applied for and received statutory accident benefits from State Farm Mutual Automobile Insurance Company ("State Farm"), payable under the *Schedule.*[1] State Farm refused payment of certain medical and rehabilitation expenses. The parties were unable to resolve their disputes through mediation, and Ms. Ramballe applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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[1]The *Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended by Ontario Regulations 462/96, 505/96, 551/96 and 303/98.

The issues in this hearing are:

1. Is Ms. Ramballe entitled to receive medical benefits for the cost of physiotherapy and other treatment at the Rehab Centre, in the amount of $5,145, and the cost of Dr. Sigesmund's dental treatment, in the amount of $2,439, pursuant to sections 14 and 24 of the *Schedule*?

2. Is State Farm liable to pay Ms. Ramballe's expenses in respect of the arbitration under section 282(11) of the *Insurance Act*?

Ms. Ramballe also sought interest on any benefits owing.

Result:

1. Ms. Ramballe is not entitled to medical benefits for the cost of either the Rehab Centre's treatment or Dr. Sigesmund's treatment.

2. The issue of expenses is deferred, pending the parties' attempt to resolve the matter.

EVIDENCE AND ANALYSIS:

Background:

Ms. Ramballe, a third-year community college student, was injured on May 12, 1998, when a truck hit the car she was driving. Her car was struck on the driver side and she was thrown forwards and backwards. She testified that she suffered pain along the left side of her body, from her head to her feet. She underwent various types of treatment, but has not improved significantly since the accident. She continues to experience pain, including a burning sensation on the left side of her face, pain in her left shoulder and headaches.

Ms. Ramballe's family physician, Dr. E. Stern, initially referred her to the West Hill Physiotherapy clinic, where she was treated from May 20th to mid-June, 1998. West Hill's discharge report notes, in part, that Ms. Ramballe's overall condition had not improved significantly and that she was quite pain-focussed and self-limiting. She failed to attend treatments for one week. Ms. Ramballe left the clinic entirely without notifying her therapist. On June 10, 1998, she consulted a chiropractor, Dr. M. Shedletzky, who referred her to the Rehab Centre. She began treatment there in mid-June. Dr. Shedletzky reported that Ms. Ramballe was still in a great deal of pain, that she presented as somewhat hysterical and that her previous physiotherapy had not been helpful. Dr. Shedletzky outlined the treatment that would be undertaken at the Rehab Centre to alleviate Ms. Ramballe's symptoms. Ms. Ramballe testified that she preferred the Rehab Centre because it had more equipment and different treatments than the West Hill clinic. Dr. Stern's notes indicate that she mentioned it had a pool.

From June to September 1998, Ms. Ramballe underwent two treatment phases at the Rehab Centre. The first phase was four weeks in length and consisted of an initial assessment and preparation of the treatment plan, as well as 15 sessions of physiotherapy, exercise and passive treatments of Ms. Ramballe's injuries. The second phase was eight weeks in duration and consisted of work conditioning and hydrotherapy. The Rehab Centre assessed Ms. Ramballe on approximately June 15, 1998 and reported that she suffered from the effects of a whiplash accident, lumbar and thoracic strain, left sciatica, TMJ closed head injury, left shoulder tendonitis and chest pain. The Rehab Centre submitted a treatment plan to the Insurer prescribing an initial course of physiotherapy and conditioning. The Insurer subsequently referred Ms. Ramballe to a medical and rehabilitation DAC, where, in September 1998, various assessors considered Ms. Ramballe's need for passive and active therapy. In particular, Dr. P. Salituro (a chiropractor), Ms. Andrea Atkins (a physiotherapist) and Ms. Pearl Mark (a kinesiologist) concluded that in the absence of objective signs of impairment and given various inconsistencies in the examinations, Ms. Ramballe should not undergo any further passive or active therapies.

Shortly after the accident, Ms. Ramballe began to experience pain in her left jaw and on the left side of her face. In August 1998, her treating physiatrist, Dr. A. Kachooie, referred her to Dr. Barry Laibovitz, a dentist. Dr. Laibovitz submitted a treatment plan, noting that Ms. Ramballe had suffered a Grade II whiplash, left temporomandibular joint (TMJ) capsulitis, and myofascial pain dysfunction in her left jaw. He noted that his short term goal was "to make [a] definitive diagnosis." In September 1998, Dr. Laibovitz reported that, although the precise mechanism of the accident was unclear, Ms. Ramballe must have struck the left side of her head in the collision, causing injury to the structures of her TMJ and the associated musculature. Dr. Laibovitz also reported that Ms. Ramballe presented with symptoms of a brain injury, as well as chronic pain syndrome. He recommended an MRI of the left TMJ (to assess for intra-articular damage) and injection therapy (to relieve her left temple pain), but suggested that any further treatment be delayed pending the assessment and stabilization of her psychological, neurological and physical condition.

As part of the September 1998 medical and rehabilitation DAC, Ms. Ramballe was examined by Dr. Firind Cox, a dental surgeon. Dr. Cox reported that, based on the dental history and clinical examination, Ms. Ramballe did not suffer from a TMJ dysfunction related to the May 1998 motor vehicle accident. Dr. Cox concluded that no treatment was required or reasonable in relation to Ms. Ramballe's symptoms. In October 1998, Dr. Cox reviewed Dr. Laibovitz's treatment plan and assessment, and concluded that there were numerous discrepancies between their two examinations and that he could find no objective signs of the subjective complaints Ms. Ramballe had made to Dr. Laibovitz. Dr. Cox reiterated that Ms. Ramballe was not suffering from a TMJ disorder related to the motor vehicle accident and that he would, therefore, not support any associated treatment.

In February 1999, on referral from Mr. Longley's office, Dr. S.L. Sigesmund, a dentist, examined Ms. Ramballe concerning her ongoing symptoms of left-sided facial and jaw pain. Dr. Sigesmund noted certain abnormalities in Ms. Ramballe's TMJ musculature and concluded that she suffered from "TMD," that is, TMJ dysfunction or disorder, as a result of the May 1998 motor vehicle accident. Dr.

Sigesmund submitted a treatment plan whose goal was to eliminate or minimize Ms. Ramballe's TMJ problems. He treated Ms. Ramballe from February 4 to October 13, 1999.

In April 1999, Dr. Cox reassessed Ms. Ramballe at a second medical and rehabilitation DAC and concluded that there were "simply too many inconsistencies in both the dental history and clinical examination" to support a finding that Ms. Ramballe had TMJ dysfunction. Dr. Cox also noted that there were no objective signs of a TMJ problem and that Ms. Ramballe's subjective complaints were inconsistent and exaggerated. Finally, he noted that Ms. Ramballe had only obtained minor improvement with the bite plane therapy Dr. Sigesmund administered.

Findings:

Ms. Ramballe bears the onus of establishing that the treatments she received at the Rehab Centre and Dr. Sigesmund's office were reasonable and necessary. I find that Ms. Ramballe has not discharged this onus.

(a) Credibility

Ms. Ramballe's evidence contained numerous discrepancies concerning her pre-accident medical history, the mechanism of the accident and the nature and development of her symptoms. I find that these significantly undermined her credibility, as well as the general validity of her claim.

Ms. Ramballe had suffered neck and low back pain, as well as a chronic pain syndrome, in 1993 and 1994, as a result of two domestic assaults. However, she testified that she could not recall any neck or back pain, or any physical problems at all, before the motor vehicle accident. She testified that she recalled seeing Dr. E.A. Sue-A-Quan, an orthopaedic surgeon who treated her in 1994 for the neck and back pain caused by the domestic assault. However, she also stated that she could not recall why

she had seen Dr. Sue-A-Quan and that she could not recall any therapy at all. Several DAC assessors asked Ms. Ramballe about her prior medical history, specifically whether she had suffered physical problems similar to those she experienced after the motor vehicle accident. However, she only stated that she had previously suffered from a thyroid condition. She denied having had any other physical problems or injuries. One of the assessors was aware of Ms. Ramballe's earlier neck and back problems and pointed this out to her, to which Ms. Ramballe responded that she did not see any correlation between the previous injuries and those suffered in the car accident.

While Ms. Ramballe's earlier problems may have resolved prior to the accident (she testified that she was in good health before the accident, and Dr. Stern's notes do not refer to neck and back pain between 1995 and 1998), I nevertheless find that they were relevant to the investigations into the nature of her accident-related injuries and that she should have disclosed this information.

At the hearing, and in at least one medical examination, Ms. Ramballe stated that she struck her forehead against the steering wheel in the accident. Dr. Sigesmund testified that she had said she hit her face against the steering wheel. In various other medical examinations, Ms. Ramballe stated that she was unsure or could not recall whether she had hit her head. As discussed more below, these inconsistencies are directly relevant to the issue of whether Ms. Ramballe suffered a TMJ injury in the accident.

As noted above, several DAC assessors commented on the discrepancies in Ms. Ramballe's presentation. For example, Ms. Atkins (the physiotherapist) stated that Ms. Ramballe showed "five out of five positive signs of pain magnification" and that, although she was self-limiting and guarded in the examination, she was observed to have normal range of movement in the cervical and lumbar areas. Ms. Mark (the kinesiologist) reported that Ms. Ramballe's "results were considered submaximal with inconsistencies demonstrated" and that the "FAE results should be interpreted with caution as a valid profile of Ms. Ramballe's maximal functional abilities was not demonstrated." Dr. Cox noted that Ms.

Ramballe had no pain response or reflex to palpation of relevant muscle groups, but, upon being questioned, stated that she experienced pain in these areas. Despite being asked by Dr. Cox about any additional symptoms in her face, Ms. Ramballe only mentioned numbness upon being specifically prompted by Dr. Cox. Dr. Cox also found that Ms. Ramballe's general responses during the examination were extremely exaggerated and pain-fixated, with no objective basis for such a reaction.

On the basis of these discrepancies, I find that Ms. Ramballe has misrepresented the history, nature and development of her condition and that this significantly undermines the reasonableness of her treatment at both the Rehab Centre and Dr. Sigesmund's office.

(b) The Rehab Centre - reasonableness of the treatment

While I have found Ms. Ramballe's credibility to be lacking, I am, nevertheless, satisfied that she experienced some degree of pain following the accident. In this regard, I note that even the DAC assessors who questioned the extent of Ms. Ramballe's symptoms, found that she had suffered some soft tissue injuries along the left side of her body. For example, while Ms. Mark cautioned that the FAE results were unreliable, she concluded that Ms. Ramballe "likely sustained uncomplicated soft tissue injuries to her left arm, left anterior chest, neck and lower back, as well as post-traumatic headaches as a direct result of the motor vehicle accident." However, I do not find that Ms. Ramballe's subjective complaints of pain, in themselves, warranted the physiotherapy treatment provided by the Rehab Centre.

As noted above, Ms. Ramballe was initially treated at the West Hill physiotherapy clinic. I accept that she continued to experience pain after this therapy. However, I do not find it reasonable that she left the clinic to begin treatment at the Rehab Centre. According to West Hill's discharge note, Ms. Ramballe did not attend a number of scheduled treatment sessions. She did not complete the programme designed for her and was discharged because she had left the clinic on her own. I heard no evidence that she told the clinic she was dissatisfied with the treatment there. Dr. Stern did not appear to have

referred Ms. Ramballe to the Rehab Centre and she did not appear to seek his approval to change clinics. At the hearing, she could not say how she came to be seen at the Rehab Centre.
West Hill's discharge note indicates that Ms. Ramballe experienced no significant improvement over the course of her treatments and, consistent with the DAC's findings, that she had been very pain-focussed and self-limiting. I heard no evidence that Dr. Shedletzky or the Rehab Clinic sought information about the nature or outcome of West Hill's treatment. Ms. Ramballe had told Dr. Shedletzky she was dissatisfied with her earlier treatment, but Dr. Shedletzky did not appear to know of the problems she had had there, specifically, that she had missed a number of sessions and that the particular treatments administered had not provided her significant relief.

Ms. Ramballe apparently preferred the Rehab Centre because it had more equipment and different treatments than the West Hill clinic. However, I see no medical evidence that the treatments or facilities at West Hill were, in fact, inadequate. In light of the numerous observations of Ms. Ramballe's excessive pain behaviour, and in the absence of any expert evidence that West Hill's programme was ill-suited to Ms. Ramballe, I am not prepared to find that Ms. Ramballe's own perception of her needs was a reasonable basis for her to leave West Hill and to begin treatment at the Rehab Centre.

Similarly, West Hill's final assessment of Ms. Ramballe's condition (to the extent that they could provide such a report) suggested that further active and passive therapy at a rehabilitation clinic might not be effective. I find, at the very least, that Ms. Ramballe should have completed her therapy at West Hill, before she sought treatment elsewhere. West Hill would then have been able to advise whether she would benefit from further treatment. Dr. Stern would also have been able to address this and, if necessary, to review her need to be treated at another clinic. In the circumstances under which Ms. Ramballe left West Hill, I am not prepared to find that it was reasonable and necessary for her to be treated at the Rehab Clinic. Even assuming Ms. Ramballe required further structured treatment, I see no reason that this could not have been provided by West Hill or that she needed to begin the treatment process (including the initial assessment) over again at the Rehab Centre.

Ms. Ramballe testified that she felt better after going to the Rehab Centre. In particular, her left hand and foot pain improved. However, she said that she continued to feel pain in her neck, shoulder and back, and only obtained temporary relief (two to three hours) after each treatment session at the Rehab Centre. I do not find that Ms. Ramballe's condition significantly improved through the Rehab Centre's treatments. I find that she was in essentially the same position as when she left the West Hill clinic. Consistent with West Hill's observations, the DAC assessors found that Ms. Ramballe's condition contained a significant non-organic component. They concluded that she would not benefit further from additional active or passive therapy and that she should continue with a self-directed home exercise programme. I find that these comments further indicate that it was neither reasonable nor necessary for Ms. Ramballe to leave the West Hill clinic to begin a new trial of physiotherapy at the Rehab Centre.

According to two psychological DAC assessments (in September 1998 and April 1999), Ms. Ramballe was apparently treated by Dr. S. Daei, a psychiatrist, during the summer of 1998, the same period in which she was being treated at the Rehab Centre. Dr. Daei's reports were not in evidence. However, he apparently provided counselling for Ms. Ramballe's symptoms of "depressive mood, insomnia and PTSD [post-traumatic stress disorder] features." In December 1998, Dr. Stern also reported that Ms. Ramballe exhibited features of "a chronic pain state and post traumatic stress disorder." The first psychological DAC assessment, by Dr. G. Tafler, a psychiatrist, found that psychological therapy was not necessary given that Ms. Ramballe's symptoms of poor memory and concentration, daytime sleepiness, dizziness and headaches were probably caused by her chronic ingestion of acetaminophen with codeine. The second DAC assessment, by Dr. E. Morris, a psychologist, reported that Ms. Ramballe appeared to have developed some form of post-traumatic stress disorder some time after the accident and that she had been "stuck or immobilized by a combination of factors including her magnified or exaggerated pain sensations, excessive emotional reactions to the latter and hypochondriacal or histrionic proclivity." Dr. Morris concluded that Ms. Ramballe's maladaptive illness behaviours and significant adjustment/emotional difficulties warranted psychological intervention.

As suggested above, I am prepared to accept that Ms. Ramballe experienced pain following the motor vehicle accident and that her symptoms continued after she left the West Hill physiotherapy clinic. However, in light of both the significant psychological/emotional component of her condition and the circumstances under which she pursued additional physical therapy, I am not satisfied that the treatments she received at the Rehab Centre were reasonable and necessary.

On behalf of the Insurer, Mr. Taylor disputed the need for the second phase of treatment since it was twice as long as the first phase, but was not in the acute phase of Ms. Ramballe's rehabilitation, and because the treatment plan for the second phase was undated, not supported by a reassessment of Ms. Ramballe's progress and was submitted after the treatment had started. I find no particular relevance to the fact that the second phase of treatment was longer than the first or that the treatment plan for the second phase was undated. However, I agree that it was not reasonable for the Rehab Centre to proceed to a second phase of treatment.

As discussed, there is no indication that Ms. Ramballe benefitted significantly from the first phase of treatment. Ms. Ramballe testified that she only received very brief periods of relief after each session. In one sense, the DAC reports suggest that both treatment phases were reasonable since they formed a comprehensive approach to Ms. Ramballe's rehabilitation. However, in light of their concerns about the non-organic aspects of her symptoms, the fact that she had not benefitted from the Rehab Centre's treatments and their recommendation that an informal, self-directed rehabilitation programme should replace the passive and active therapies she had received, I find that the Rehab Centre ought to have reassessed Ms. Ramballe's progress after the first phase of treatment and determined whether a second phase of therapy would be of use to her. In this respect, I find that the circumstances under which Ms. Ramballe entered the second phase of treatment at the Rehab Centre were similar to those under which she left the West Hill clinic and started the first phase of treatment at the Rehab Centre: her condition was marked by a significant non-organic component, it had remained essentially unchanged during the

course of treatment and she had not been reassessed to determine if further physical therapy would be of use to her.

The only evidence that a re-assessment of Ms. Ramballe's condition took place before the second treatment phase began is a check mark in the Rehab Centre's file. The first treatment plan stated the goals to be reducing Ms. Ramballe's pain, increasing her rotation of movement and tolerance level, and returning her to her pre-accident level of activity as a student and as a home-maker. There is no evidence that these goals were met or even partially achieved through the first phase of treatment. The only evidence of the course of Ms. Ramballe's rehabilitation is the second treatment plan, which restates the goals of improving Ms. Ramballe's function and tolerance to the point of returning her to her maximum rehabilitation potential. In the absence of any evidence as to Ms. Ramballe's progress following the first phase of treatment (including the extent to which the initial treatment goals had been met), in light of Ms. Ramballe's own evidence concerning the very limited relief she received from the Rehab Centre's treatments and given the DAC assessors' conclusions that Ms. Ramballe would not benefit from any further passive or active therapy, I find that it was not reasonable for the Rehab Centre to move Ms. Ramballe into a second phase of treatment.

In light of these conclusions, I find it unnecessary to address Mr. Taylor's argument that the second phase of treatment was unreasonable since the second treatment plan was not submitted to the Insurer until after the treatment had started, contrary to section 38 of the *Schedule*. I also find it unnecessary to address Mr. Taylor's submission that the fees the Rehab Centre charged for the second phase of treatment were unreasonable.

I, therefore, find that Ms. Ramballe is not entitled to medical benefits for the cost of treatment at the Rehab Centre.

(c) TMJ - causation

I find that Ms. Ramballe has not discharged the onus of establishing, on a balance of probabilities, that she suffered a TMJ dysfunction as a result of the May 1998 motor vehicle accident. I accept that she subjectively experienced a degree of pain in the left side of her face following the accident. However, in a manner similar to her other symptoms (and the associated treatment at the Rehab Centre), I am not satisfied that she suffered a specific TMJ condition which warranted the treatment Dr. Sigesmund provided.

Dr. Laibovitz placed significant emphasis on the fact that Ms. Ramballe likely hit the left side of her head in the accident. As he stated, "continuing with this assumption, there would be shearing forces exerted on the left temporomandibular joint causing injury to the structures of the joint and the associated musculature" and that "the severe pain and hyperalgesia of the left temple is likely due to direct trauma." I do not accept Dr. Laibovitz's conclusion that Ms. Ramballe hit her head in the accident. As noted above, since the accident, Ms. Ramballe has given various answers as to whether she hit her head. I also accept Dr. Cox's view that, in light of Ms. Ramballe's definitive statements to the effect that "she suffered no contusions, lacerations or swelling of the head or face region as a result of the car accident," it would be mere "conjecture" that this in fact occurred. I am, therefore, not satisfied that Ms. Ramballe hit her head in the accident, and I find that this significantly weakens Dr. Laibovitz's conclusion that Ms. Ramballe suffered an associated TMJ injury.

Dr. Sigesmund reported that TMJ dysfunction can result either from trauma to the head or face, or from an extension/flexion injury, namely, whiplash. He concluded that the mechanism of the accident was sufficient to cause Ms. Ramballe's TMJ disorder, even if she did not hit her head. In light of Dr. Laibovitz's comments, I am not prepared to find that it is irrelevant whether Ms. Ramballe hit her head in the accident. I find this to be a significant factor in the assessment, and that Ms. Ramballe has not established that she, in fact, hit her head.

Dr. Laibovitz recommended further investigations to clarify the nature and extent of Ms. Ramballe's injuries, specifically, "to make [a] definitive diagnosis." He also suggested that treatment of the TMJ

condition should be delayed pending assessment and stabilization of Ms. Ramballe's other problems. I am not satisfied that Dr. Laibovitz clearly diagnosed TMJ dysfunction. However, even if he did, he did not recommend that treatment should immediately be undertaken. I find this significant both in respect of Ms. Ramballe's jaw pain, as well as her other left-sided pain. As noted earlier, even if Ms. Ramballe suffered various types of physical pain, this did not automatically warrant an extended course of physiotherapy. I agree with Dr. Laibovitz's more measured approach of addressing the psychological component of her condition before continuing with further, specific TMJ treatment.

Based on assessment inconsistencies, exaggerated pain responses and a lack of objective findings, Dr. Cox concluded that Ms. Ramballe had not suffered a TMJ disorder as a result of the motor vehicle accident. Dr. Cox did not specifically address Ms. Ramballe's symptoms and presentation in the context of her other, non-organic difficulties. In this regard, Dr. Sigesmund testified that confusion and inexact answers are common where the patient's overall condition involves psychological problems and/or pain fixation. However, I find that Ms. Ramballe's presentation during the various examinations was not simply a matter of confusion or inexact answers. As discussed earlier, I find that Ms. Ramballe failed to disclose relevant information, gave conflicting and misleading answers and exhibited exaggerated pain responses during her various medical examinations. Although asked by Dr. Sigesmund, Ms. Ramballe failed to disclose her pre-accident medical history. Dr. Sigesmund appeared to give two answers as to whether Ms. Ramballe's previous neck pain was relevant to the diagnosis of her post-accident facial symptoms, saying at one point that this might be relevant, while at another, saying that it would only be relevant if her earlier neck pain had been accompanied by a TMJ problem. I find that Ms. Ramballe's presentation to Dr. Sigesmund (as well as to the other medical examiners) undermined the reliability of his conclusions.

Dr. Sigesmund maintained that thermographs, as well as radiographs, provided objective evidence of jaw displacement and TMJ disorder. He also stated that he employed a Doppler device and detected crepitus (a "grating, sandpaper noise") in Ms. Ramballe's TM joints. However, a June 1998 radiological examination of Ms. Ramballe's TM joints was normal. Dr. Cox also had radiographs done

and reported them as normal. Dr. Laibovitz reported that no joint sounds were detected in his clinical examination of Ms. Ramballe's TMJ. Dr. Cox examined Ms. Ramballe twice and reported that he could not detect any clicking, crepitus or sounds in either of Ms. Ramballe's jaws.

Dr. Sigesmund testified that, unlike Dr. Cox, he conducted both a TMJ scale assessment (a comprehensive survey of the sites of a patient's pain) and a craniomandibular examination (an extensive physical examination of the patient's head and neck muscle groups) to confirm the presence of a TMJ disorder. However, the TMJ scale report stated the "report confidence" to be "low due to excessive careless, confused, random or improbable responding," that Ms. Ramballe only "appeared" to have a TMJ disorder and that a non-TMJ disorder was indicated, with stress levels high and psychological factors appearing to play a significant role.

Dr. Sigesmund testified that, when assessing a patient's condition, he determines the presence of soreness by observing particular physical reactions in the patient's face, not in their response to questions on pain. However, as Dr. Sigesmund acknowledged at the hearing, Dr. Cox also conducted a detailed examination of Ms. Ramballe's condition and observed Ms. Ramballe's physical response to pain. Dr. Cox noted a number of inconsistencies in Ms. Ramballe's presentation. For example, Ms. Ramballe subjectively complained of sensitivity when certain teeth were percussed, but exhibited no pain response or reflex. Ms. Ramballe also had both no pain response and exaggerated pain responses to palpation of the same musculature. She also had exaggerated pain responses to both gentle and firm palpation of her left temporomandibular muscles.

I do not accept Dr. Sigesmund's view that there is sufficient objective evidence of Ms. Ramballe's TMJ condition. Both Dr. Laibovitz and Dr. Cox differed with Dr. Sigesmund on what Dr. Sigesmund felt were key objective indicators of a TMJ disorder. Dr. Sigesmund's clinical examination of Ms. Ramballe was also significantly undermined by the discrepancies noted in both the TMJ scale

assessment and Dr. Cox's examination. Dr. Cox concluded that any diagnosis of TMJ disorder was questionable since it would be based on Ms. Ramballe's
unsubstantiated subjective symptoms. I accept that in the absence of consistent or reliable objective evidence, Ms. Ramballe's subjective presentation was critical to any diagnosis of TMJ disorder. As noted, Ms. Ramballe's clinical presentation was unreliable in a number of ways. I, therefore, find, on a balance of probabilities, that Ms. Ramballe did not suffer from a TMJ disorder as a result of the May 1998 motor vehicle accident.

(d) TMJ - Reasonableness of the treatment

In light of this conclusion, I find that it was not reasonable or necessary for Dr. Sigesmund to have treated Ms. Ramballe for a TMJ disorder. As noted above, even Dr. Laibovitz did not feel that Ms. Ramballe should immediately be treated for such a condition. Unlike Dr. Sigesmund (who was also aware of the significant non-organic component of Ms. Ramballe's condition), Dr. Laibovitz recommended further investigations to determine the exact nature of Ms. Ramballe's problem and suggested that treatment of her condition should be delayed pending assessment and stabilization of her other problems. Therefore, even assuming that Dr. Laibovitz clearly diagnosed a TMJ disorder, and even if this was the source of Ms. Ramballe's left-sided facial pain, I find that she has not established that it was reasonable or necessary for her to receive the treatment provided by Dr. Sigesmund.

Dr. Sigesmund testified that, based on Ms. Ramballe's reporting, her condition continuously improved under his care. However, as noted by Dr. Cox in his second report, Ms. Ramballe only reported minor improvement in her condition (25 per cent) as a result of Dr. Sigesmund's treatment. Ms. Ramballe told Dr. Cox that she still had difficulty chewing and eating hard foods and that she had a "tingling, clicking and ringing sound" in her left ear. Ms. Ramballe also testified that she still had pain in the left side of her face, head and shoulder after Dr. Sigesmund's treatment.

Finally, I find that it was not reasonable or necessary for Ms. Ramballe to seek a further assessment from Dr. Sigesmund, having already been evaluated by Dr. Laibovitz. Dr. Laibovitz conducted a thorough initial examination of Ms. Ramballe and concluded, according to Ms. Ramballe, that she suffered from an accident-related TMJ disorder. I heard no evidence as to why Ms. Ramballe did not return to Dr. Laibovitz. However, even if Ms. Ramballe disagreed with Dr. Laibovitz's approach to treatment, there is no indication that she required a further comprehensive assessment. In this regard, Dr. Sigesmund testified that he was unaware of Dr. Laibovitz's involvement with Ms. Ramballe's case and did not know that he had conducted a full review of her condition or that he had recommended delaying treatment.

For all of these reasons, I find that Ms. Ramballe has failed to establish that Dr. Sigesmund's treatments (including his initial assessment of her) were reasonable and necessary.

(e) Interest

Based on the above findings, Ms. Ramballe is not entitled to interest on the outstanding amounts.

EXPENSES:

The parties reserved their submissions on expenses pending my decision on the merits of the case. The issue of expenses can be addressed in a brief telephone resumption of the hearing, should the parties not be able to resolve the matter.

February 26, 2001

Eban Bayefsky
Arbitrator

Date

FSCO A99–001093

BETWEEN:

SAVITRI RAMBALLE

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Ms. Ramballe is not entitled to medical benefits for the cost of either the Rehab Centre's treatment or Dr. Sigesmund's treatment.

2. The issue of expenses is deferred, pending the parties' attempt to resolve the matter.

February 26, 2001

Eban Bayefsky
Arbitrator

Date