

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Center for Specialty Surgery (Applicant)	AAA Case No.	17-16-1043-9442
- and -	Applicant's File No.	NYS470.01, NYS470.02, NYS470.03, NYS470.04
Progressive Casualty Insurance Company (Respondent)	Insurer's Claim File No.	153060429
	NAIC No.	24260

### ARBITRATION AWARD

I, Lori Ehrlich, 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 01/30/2018  
Declared closed by the arbitrator on 01/30/2018

Michael Lamond, Esq. from Akiva Ofshtein PC participated in person for the Applicant

Erin McFadzen, Esq. from Law Offices of Rachel Perry participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,041.68**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amended to \$3,275.24

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

In dispute are Applicant's bills in the sum of \$3,275.24 for manipulation under anesthesia performed on Applicant's assignor as a result of injuries allegedly sustained in an automobile accident on December 17, 2015.

Respondent has denied these bills based on peer review and the issue is whether Respondent has proved that the services at issue were not medically necessary.

I have reviewed the documents entered into the ADR by January 30, 2018.

#### 4. Findings, Conclusions, and Basis Therefor

The manipulation under anesthesia (MUA) at issue was performed on the Claimant, S.R.M., a thirty four year old male, on April 10, 2016. The services at issue include an initial consultation and manipulation under anesthesia including facility fee and anesthesia. The instant case was heard simultaneously with two other claims for MUA performed on July 10, 2016 (17-16-1051-9267, 9268), and the evidence in all three cases will be considered together.

Applicant has set forth a prima facie case by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11<sup>th</sup> Jud. Dusts.] Given that the Applicant has set forth a prima facie case, the burden now shifts to the insurer to prove that the services at issue were not medically necessary. (see Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity. , 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

The bills in dispute were denied based on the peer reviews of Dr. Christopher Burrei, who concluded that the manipulation under anesthesia was not medically necessary. Dr. Burrei states that based on an examination conducted by Dr. Onyema on the date of the MUA the Claimant complained of bilateral shoulder pain, middle back and low back pain, and examination was positive for pain, stiffness and decreased range of motion of the cervical spine, positive compression and depression tests and intermittent thoracic spine, lumbar spine and shoulder pain, and MUA was recommended.

Dr. Burrei maintains that medical necessity has not been established for the initial consultation conducted on April 10, 2016 because the sole purpose of the consult was to initiate manipulation under anesthesia which was not medically necessary. Dr. Burrei notes that the Claimant was under the care of an orthopedist and would not require additional orthopedic evaluation in the absence of onset of any new symptomatology.

In reviewing the services under consideration Dr. Burrei states, "I would initially note that it is not the standard of care for a practitioner to perform an initial consultation and surgery on the same day. I would further comment that it is unclear why a chiropractor would be assisting an orthopedic surgeon doing a surgical procedure, on articular, involving the joints which is outside the scope of care."

In addressing the manipulation under anesthesia performed on the hips and shoulders, Dr. Burrei maintained that there was no evidence of injury to the hips or shoulders which would merit manipulation under anesthesia and that the medical records of Dr. Allen, an orthopedist and Dr. Ciechorska do not document any complaints to the

shoulders or hips. Dr. Burrei states that there was no imaging done of the hips or shoulders and he points out that the consultation conducted by Dr. Onyema on the date of the MUA states, for the first time, that the Claimant had complaints of bilateral shoulder pain. The Claimant also reported mid and low back pain, but no complaints of pelvic pain. Dr. Burrei maintains that in the sole reason for performing MUA of the shoulders would be adhesive capsulitis, which was not present and certainly not posttraumatic in this case.

In considering the medical necessity of the procedure referable to the spine, Dr. Burrei states "...I would note the medical records do not document any difficulty tolerating chiropractic care, physical therapy, acupuncture or kinesiotaping that would narrate performance of manipulation under anesthesia. Certainly, there was no indication of placing the claimant at risk under anesthesia to provide services that were being tolerated and performed in an out-patient type setting." Additionally he maintains that the New York State Medical Treatment Guidelines do not recommend MUA for musculoskeletal injuries of the spine.

On September 7, 2016, Dr. Burrei submitted a peer review responsive to a second MUA conducted July 10, 2016. In that peer review Dr. Burrei states that he reviewed a follow up evaluation conducted by Dr. Onyema on July 10, 2010 to determine the medical necessity of the testing. Dr. Burrei notes that at the follow up evaluation the Claimant complained of intermittent neck, low back and shoulder pain and stiffness, and that some significant findings are noted on examination, (with the exception of response to prior MUA conducted three months earlier). Dr. Burrei concluded that the second MUA performed on July 10, 2016 was not medically necessary, excessive and not within the standard of care. Dr. Burrei again opined that it is not the standard of care for a practitioner to perform an initial or follow up consultation on the surgical date consultation; that it is unclear why a chiropractor would be assisting an orthopedic surgeon doing a surgical procedure, on articular, involving the joints which is outside the scope of care and that there was no evidence of injury to the shoulder or pelvis.

Dr. Burrei submitted a dated November 1, 2016 addendum to his peer reviews after reviewing a letter of medical necessity from Dr. Onyema and, Dr. Bronstein's operative day one procedure note stating that his position remained unaltered. Dr. Burrei states that the letter of medical necessity does not refer to any specifics regarding this Claimant, and appeared to be "a vague and generalized rationale for performing the procedure.

I find that Respondent has effectively rebutted the presumption of medical necessity established by the Applicant for the manipulation under anesthesia at issue. Dr. Claps's peer review sets forth sufficient factual foundations and medical rationale upon which his conclusions are based. As such, the burden shifts to the Applicant to refute the Respondent's evidence (see Expo Medical Supplies Inc. v. Claredon Ins. Co., 2006 NY Slip Op 50892(u).)

Applicant has submitted a rebuttal to the peer review from Dr. Onyema, who, according to the reports, performed the initial consultation and shoulder MUA procedures conducted on April 10, 2016. Dr. Onyema's rebuttal, which is undated,

addresses the medical necessity of the MUA conducted on April 10, 2016. Dr. Onyema details his examination of the Claimant on April 10, 2016, stating that he diagnosed the Claimant with cervicgia, shoulder pain, and cervical disc disorder with radiculopathy and cervical, thoracic, lumbar and pelvic region segmental and somatic dysfunction. Dr. Onyema states that manipulation under anesthesia was recommended, "as conservative treatment to date had not resulted in maximum medical improvement"

Dr. Onyema opines that the MUA performed on April 10, 2016 was medically necessary pursuant to NAMUAP standards because the Claimant had a favorable response to conservative noninvasive chiropractic treatment but continued to have intractable pain after 4 months of chiropractic treatment; sufficient care was rendered prior to using MUA (standard is 6-8 weeks); manipulative procedures have been used in the clinical setting during the 6-8 week period prior to the MUA and the Claimant's level of reproduced pain interferes with lifestyle.

Dr. Onyema contends that Dr. Burrei's peer review cites to standards that are not recognized by the NAMUAP and therefore not a standard for evaluating a patient for the performance of MUA.

Dr. Burrei submitted a second addendum to his peer review on August 29, 2017 after reviewing Dr. Onemya's rebuttal in which he states that his position as to the medical necessity of the procedures remains unchanged.

Upon careful review of the evidence presented I find I find that Applicant has failed to rebut the findings of the peer reviewer. Initially, and as concerns the MUA performed on April 10, I note that while the April 10, 2016 consultation and operative report for the shoulder MUA are signed by Dr. Onemya, the NF3 for each of the services state that the consultation and MUA of the shoulders were performed by Dr. Dovlatyan Vanuzha. More significantly, I find that the rebuttal and medical documentation submitted, including the letter of medical necessity fail to meaningfully address the issues raised by the peer reviewer. There is no explanation as to why the MUA was performed on the shoulder and pelvic ring when the medical documentation submitted does not indicate that the Claimant had subjective complaints referable to the shoulder or pelvic area prior to April 10, 2016, and that all of the treating providers, other than the MUA providers do not document any objective findings referable to the shoulders or hips. I note that there is a February 3, 2016 report from Dr. Bronstein, the chiropractor who performed/assisted in the MUA in April 10, 2016, which also fails to reveal any complaints of shoulder pain or pelvic pain. In fact the report indicates that the only examination that was conducted was an examination of the cervical spine, there was no examination of or diagnosis referable to the thoracic or lumbar spine, the shoulders, hips or pelvis and neurological examination was within normal limits.

As concerns the claims for manipulation under anesthesia conducted on July 10, 2016, Applicant has failed to submit a rebuttal to Dr. Burrei's peer review, or any other compelling medical evidence to establish that the services on that date were medically necessary. Based on the foregoing, Applicant's claims for MUA on April 10 and July 10, 2016 are denied.

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.

6. **I find as follows with regard to the policy issues before me:**

- The policy was not in force on the date of the accident
- The applicant was excluded under policy conditions or exclusions
- The applicant violated policy conditions, resulting in exclusion from coverage
- The applicant was not an "eligible injured person"
- The conditions for MVAIC eligibility were not met
- The injured person was not a "qualified person" (under the MVAIC)
- The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

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

State of New York  
SS :  
County of Westchester

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

02/10/2018  
(Dated)

Lori Ehrlich

**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.*

**ELECTRONIC SIGNATURE**

**Document Name:** Final Award Form  
**Unique Modria Document ID:**  
89d62c7fd6b7c4e889bc2fe106c10219

**Electronically Signed**

Your name: Lori Ehrlich  
Signed on: 02/10/2018