

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab. Services  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-16-1040-7234

Applicant's File No. 16-6295

Insurer's Claim File No. 0358995339

NAIC No. 19232

**ARBITRATION AWARD**

I, Tasha Dandridge-Richburg, 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: EIP

1. Hearing(s) held on 04/30/2018  
Declared closed by the arbitrator on 04/30/2018

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated in person for the Applicant

Meghan McDonough, Esq. from Law Offices of John Trop participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 74.79**, was NOT AMENDED at the oral hearing.  
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The 31 year-old EIP was involved in a motor vehicle accident on February 13, 2015. At issue in this case is \$74.79 for an office visit on date of service December 21, 2015. The treatment was denied based upon an IME by Gregory Chiamonte, MD on October 30, 2015.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

#### DR. CHIARAMONTE'S IME

On October 30, 2015, Dr. Chiaramonte conducted an orthopedic IME, which was a re-examination of the EIP. The EIP was initially examined by Dr. Chiaramonte on September 9, 2015. According to Dr. Chiaramonte, the EIP's initial complaints were of pain in the neck, mid back, low back, and right hand. At the time of the October 30, 2015, re-examination the EIP complained of headaches, pain in the neck, mid back, low back, and right knee.

Dr. Chiaramonte's physical examination revealed the following with respect the EIP's cervical spine: There is no muscle spasm upon palpation. There is no complaint of tenderness upon palpation. Range of motion reveals flexion to 50 degrees (50 degrees normal), extension to 50 degrees (60 degrees normal), right lateral flexion to 45 degrees (45 degrees normal) and left lateral flexion to 45 degrees (45 degrees normal), and right rotation to 80 degrees (80 degrees normal) and left rotation to 80 degrees (80 degrees normal). She has complaints of pain with flexion, extension, right and left rotation, and right and left lateral flexion.

Neurological examination of the bilateral upper extremities shows no atrophy. Muscle strength in each range is intact. Deep tendon reflexes, biceps and triceps, are within normal limits. Sensation to light touch is within normal limits. It appears Dr. Chiaramonte may not have examined, or at least, did not conduct range of motion testing with respect to the EIP's lumbar spine. His report indicates that the lumbar spine was "[r]esolved as per my examination report."

Dr. Chiaramonte's diagnosis was cervical spine sprain/strain - resolved and lumbar spine - resolved as per my examination report. Dr. Chiaramonte opined based on his physical examination of the EIP that there is no medical necessity for continued orthopedic care including physical therapy. There is no need for household help, ambulatory services, special transportation, DME/supplies or prescription medications. There is no indication for massage therapy or surgery. Dr. Chiaramonte further notes that there is no evidence of any contributing pre-existing conditions, comorbidities, prior injuries that impact on the current injuries.

#### ANALYSIS

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not

medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). *Amaze Medical Supply, Inc. v. Eagle Ins. Co.*, 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); *Tahir v. Progressive Cas. Ins. Co.*, 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); *Millennium Radiology, P.C. v. New York Cent. Mut.*, 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); *Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co.*, 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); *All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co.*, 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Chiaramonte's IME fails to set forth a clear factual basis and a medical rationale for Respondent's denial of Applicant's claim for the treatment in dispute herein and as such, I find that Respondent has failed to establish a lack of medical necessity for same. According to Dr. Chiaramonte's October 30, 2015 report, the EIP complained of neck pain, back pain, knee pain and headaches. Dr. Chiaramonte's examination of the EIP's cervical spine revealed almost full range of motion. However, Dr. Chiaramonte's October 30, 2015 report does not include his finding with respect to an examination of the EIP's lumbar spine, instead, he indicates that her lumbar spine condition had "[r]esolved as per his examination report." It appears Dr. Chiaramonte is referring to his September 9, 2015 IME report when he writes this. However, Dr. Chiaramonte's September 9, 2015 report was not uploaded to ADR Center. As such, I am unable to review any findings with respect to his examination of the EIP's lumbar spine to determine whether his findings support his opinion that her lumbar spine condition had resolved. Additionally, an examination of the EIP's cervical and lumbar spine as reported by Dr. Strut on December 21, 2015, which is less than two months after the IME, finds significant limitations of cervical and lumbar spine motion. As such, I find that Respondent has not met its burden and its denial cannot be upheld.

ACCORDINGLY, APPLICANT IS AWARDED \$74.79, TOGETHER WITH INTEREST AND ATTORNEY'S FEES.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	<b>RES Physical Medicine &amp; Rehab. Services</b>	<b>12/21/15 - 12/21/15</b>	<b>\$74.79</b>	<b>Awarded: \$74.79</b>
<b>Total</b>			<b>\$74.79</b>	<b>Awarded: \$74.79</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/17/2016 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 (2009).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.* However, if the

benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

State of New York  
SS :  
County of Erie

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

05/02/2018  
(Dated)

Tasha Dandridge-Richburg

#### **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:**  
c6541fd242f4b27f77c22b157bbb0795

### **Electronically Signed**

Your name: Tasha Dandridge-Richburg  
Signed on: 05/02/2018