

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Complete Medical Care Services of NY PC (Applicant)	AAA Case No.	17-16-1043-3709
	Applicant's File No.	1762468
- and -	Insurer's Claim File No.	2015004500212929
Mercury Casualty Company (Respondent)	NAIC No.	11908

ARBITRATION AWARD

I, Burt Feilich, 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 05/08/2018
Declared closed by the arbitrator on 05/08/2018

Stacy Mandel Kaplan, Esq. from Israel, Israel & Purdy, LLP participated in person for the Applicant

Sabiha Farkas, Esq. from Law Office of Patrick Neglia participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,222.25**, was AMENDED and permitted by the arbitrator at the oral hearing.

Counsel for applicant agreed to reduce the amount in dispute to a total of \$3,041.02 for the services rendered on June 3rd, 2015. The ADR contains clear proof that on July 15th, 2016, long before applicant demanded arbitration of this claim on or about August 30th, 2016, respondent had issued a payment in full of \$181.23 for the consultation office visit that took place on June 3rd, 2015. Respondent has submitted a copy of both sides of the payment check including applicant's endorsement. Under those circumstances applicant should not have included the billing for that office visit in its AR-1 form.

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

3. Summary of Issues in Dispute

a. Whether the medical and electrodiagnostic testing services rendered by applicant for claimant were medically necessary and/or causally related for the treatment of injuries sustained in the accident; and, if so, whether applicant billed in accordance with the fee schedule and the regulations.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all documents included in the ADR system consisting of the submissions made by the parties.

On May 3rd, 2018, just 5 days prior to the hearing in this case, applicant uploaded to the ADR a rebuttal affidavit by Dr. Aric Hausknecht, dated April 30th, 2018. There is no indication in that belated submission that a copy of the rebuttal was sent directly to respondent's attorneys. Applicant had originally demanded arbitration around August 30th, 2016 and pursuant to the AAA rocket-docket rules it was required to submit all of its evidence at that time. Pursuant to those same rules, respondent had been required to submit all of its evidence no later than October 3rd, 2016. Counsel for respondent has objected to the late submission of the rebuttal by Dr. Hausknecht as being prejudicial and in violation of the rules. The lateness of the submission of the rebuttal affidavit prevented respondent from obtaining a reply thereto from respondent's peer reviewer, Dr. Debra Ann Pollack. Counsel for applicant has failed to provide a reasonable explanation why the rebuttal affidavit could not have been submitted in a timely manner. In the exercise of my discretion as an arbitrator, I am precluding applicant from offering that rebuttal affidavit into evidence as it clearly prejudices respondent.

No other documentation was submitted by either party at the time of the hearing.

This dispute is in the now revised amount of \$3,041.02 and involves the subject of medical and electrodiagnostic testing services rendered by applicant for the eligible injured person/assignor for the treatment of injuries sustained in an accident that occurred on April 11th, 2015. Respondent contends that the services were not medically necessary on the basis of a peer review report. It also contends that the billing for the services rendered was excessive and unreasonable as defined by the fee schedule and the regulations.

Initially, according to First Amendment to Regulation 68-D, 11 NYCRR 65-4.5, the arbitrator shall be the judge of the relevance and materiality of the evidence

offered. The arbitrator may independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Insurance Department regulations.

I have carefully reviewed the medical evidence submitted by the parties pertaining to claimant, a 54-year old woman who was a driver of a vehicle at the time of the accident, including the following: portions of the New York Presbyterian-Lawrence Hospital ER records from April 14th, 2015; an initial neurological evaluation report by Dr. Aric Hausknecht of Complete Medical Care Services of New York, PC, dated June 3rd, 2015; the results of upper and lower extremity EMG/NCS testing performed on June 3rd, 2015 finding no abnormalities; results of cervical and lumbar MRI testing performed on May 4th, 2015 showing herniated discs at C5-7, L4-5 and a bulging disc at L5-S1; an initial physical therapy evaluation from April 29th, 2015; and daily physical therapy treatment records.

In defense of the claim, respondent submits the neurological peer review report of Dr. Debra Ann Pollack, dated July 10th, 2015. She was furnished with all of the records listed above. In her opinion the clinical examination by Dr. Hausknecht on June 3rd, 2015 was consistent only with soft tissue spinal sprain and strain injuries not requiring electrodiagnostic testing. Furthermore, she contends that the history, physical examination and MRI results were suggestive of no form of peripheral neurological injury such as neuropathy, plexopathy or myelopathy. In the absence of any credible differential diagnosis other than radiculopathy, there was no reason to perform this testing. She noted that claimant was already receiving physical therapy and chiropractic treatment and the testing would have no impact on those conservative treatment methods. Finally, with the exception of some pain related muscle weakness of the right shoulder and right ankle, Dr. Hausknecht's physical examination on June 3rd, 2015 found no evidence of any focal peripheral neurological deficits, and in a sense his clinical examination findings were benign. Dr. Pollack cited to medical literature to support her opinion that there was no medical necessity for the electrodiagnostic testing claimed in this case.

After having reviewed all of the evidence and after listening to the arguments of the parties, I find that respondent has met its evidentiary burden of proving that the upper and lower extremity EMG/NCS testing performed on June 3rd, 2015 was not medically necessary. I entirely agree with the comments and criticisms made by Dr. Pollack in her peer review. In fact, other than the clinical findings made by Dr. Hausknecht on the day of the testing there was no other clinical evidence supporting the need for the testing claimed. In addition to Dr. Pollack's arguments, I would add that even on the day of the testing Dr. Hausknecht had not recorded any patient complaints of lower extremity radiating symptoms or pain and thus there was no valid reason to suspect a lower extremity peripheral

neurological injury of any kind or to perform any testing of the lower extremities. Also, the decreased muscle strength in the right shoulder noted by Dr. Hausknecht on June 3rd, 2015 seems to coincide with the musculoskeletal injuries to claimant's right shoulder that formed the basis of the referral to Dr. Gabriel Dassa, an orthopedist, on May 28th, 2015. Finally, although Dr. Hausknecht also reported a finding of slightly decreased muscle strength of claimant's right ankle on June 3rd, 2015, there were no complaints at all about that ankle to any of the other medical providers whose reports were submitted into evidence, including Dr. Dassa. Consequently, I uphold respondent's denial of claim and find the upper and lower extremity EMG/NCS testing performed on June 3rd, 2015 not medically necessary.

Therefore, my award is in favor of respondent, and the claim is denied in its entirety.

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 Nassau

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

05/10/2018
(Dated)

Burt Feilich

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:
9e6986da1ac77d794c25996acb9360e5

Electronically Signed

Your name: Burt Feilich
Signed on: 05/10/2018