

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

John Ward MD d/b/a Walden-Bailey
Chiropractic Center
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No.	17-18-1105-4667
Applicant's File No.	N/A
Insurer's Claim File No.	2017P0014455-002
NAIC No.	29742

ARBITRATION AWARD

I, Mary Anne Theiss, 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 04/16/2019
Declared closed by the arbitrator on 04/16/2019

Shannon Fuhrman, Esq. from Fuhrman Law participated by telephone for the Applicant

Joseph Licata, Esq. from Rossillo & Licata LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, \$ **1,451.24**, 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

Whether the denial, based upon a negative exam by Craig Horner, D.C., indicating that the Claimant is no longer in need of further chiropractic care or treatment, was justified. Additionally, there are issues regarding fee schedule.

4. Findings, Conclusions, and Basis Therefor

The Claimant was an unrestrained passenger of a van when the vehicle she was in was hit from the front, on March 7, 2017. The Claimant had injuries to her neck, mid back, low back, left shoulder, left wrist, left hip and left knee.

The Claimant went to Buffalo General Hospital emergency room on the day of the accident by ambulance. She had x-rays taken of her chest and was released, the same day. The Claimant was subsequently treated with physical therapy and chiropractic care. She was given medical supplies of a back brace and neck brace.

The Carrier requested an exam of the Claimant, and Dr. Craig Horner, D.C., did an exam on November 7, 2017, on behalf of the Carrier. Dr. Horner found that, at the time of the exam, the Claimant was treating with physical therapy, twice a week. She had complaints of neck, low back, right shoulder and left shoulder pain. At the time of the exam, the Claimant was seventy-seven years old. The exam of the cervical spine showed no spasm, minimal tenderness to palpation. She had normal strength in the upper extremities and all of the muscle groups. There was decreased range of motion in the cervical spine. In the thoracic spine, there was no spasm or paraspinal tenderness. There was no spasm in the lumbar spine. Minimal paraspinal tenderness. There was normal strength in the lower extremities. In the lumbar spine there was decreased range of motion. In the right shoulder, there was tenderness to palpation, with decreased range of motion. There was tenderness in the left shoulder, with also decreased range of motion and in the left elbow there was mild tenderness to palpation, with no decreased range of motion. In the left wrist, there was some decreased range of motion. In the left knee, there was decreased range of motion. In the left hip, there was decreased range of motion.

The impression of Dr. Horner was that the Claimant had cervical, thoracic, lumbar spine sprain/strain, all resolved, and Qi and blood stagnation is resolved. He stated that the Claimant's subjective complaints were not supported by objective findings; that her

treatments are not giving any lasting benefit, and he indicated that no causally-related chiropractic treatment is indicated.

From an acupuncture point of view, there was no evidence of small Qi or blood stagnation, and no acupuncture treatment was indicated.

The treatment notes from Dr. John Ward are simple checkoffs. There is no indication what the prognosis is; whether there is any improvement, other than check offs. There are no contemporary exams by Dr. Ward.

The massage therapy notes which are not in question give more of a detailed description of what is happening with the Claimant than the chiropractic treatment notes which are the subject of the arbitration.

I find that, based on the records provided that there is no rebuttal to the Independent Medical Exam.

Addressing the billing the Chiropractor billed \$48.72 perday and the fee schedule is 37.20. There were 10 bills at this rate--I fine the adjustemnt was justified.

I find that the denial was justified, and the claim is denied, in its entirety.

I want to thank the parties for taking the time to prepare their case.

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 Madison

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

05/15/2019
(Dated)

Mary Anne Theiss

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:
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Electronically Signed

Your name: Mary Anne Theiss
Signed on: 05/15/2019