

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Acupuncture Natural Wellness LLC , SY
Wellness Massage Therapy PC , Theraworks
Physical Therapy, P.C. , Touch Stone
Chiropractic P.C.
(Applicant)

AAA Case No. 17-18-1109-9094
Applicant's File No. none
Insurer's Claim File No. 0487033946 2PC
NAIC No. 29688

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

ARBITRATION AWARD

I, Toby Susan DeSimone, 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 09/27/2019
Declared closed by the arbitrator on 09/27/2019

Lana Abramov, Esq. from Kulik Law Firm, PC participated in person for the Applicant

John Palatianos, Esq. from Law Offices Of Karen L Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,082.85**, 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

Assignor/injured party, a 65 year old male, allegedly was involved in an accident on December 16, 2017. Applicants, assignee treatment providers, are seeking payment to recover for acupuncture, physical therapy, chiropractic treatment and massage performed from 3/5/18 - 8/14/18 in the total amount of \$2,082.85. Respondent denied the claims based upon its chiropractic/acupuncture and orthopedic insurance examinations. The issue is medical necessity and failure to submit a timely claim.

4. Findings, Conclusions, and Basis Therefor

There were no witnesses at the hearing. Applicant and Respondent were represented by counsel. Counsel appeared and argued in support of their respective positions. I have reviewed the documents contained in the ADR Center as of the date of the hearing. The facts as adduced at the hearing from the parties' written submissions are as follows:

The injured party was examined and evaluated in a chiropractic consultation with Angelo DiMaggio, D.C. on 1/3/18. The patient complained of neck pain radiating to the right shoulder, mid back pain and low back pain radiating to the left hip. The patient described severe pain that was getting worse. There was tenderness to palpation of the muscles in the cervical, thoracic and lumbar spine and right hip. The examination revealed limited range of motion in the cervical and lumbar spine. Sensation was diminished in the right C5 dermatome. The patient was started on a course of chiropractic treatment. Dr. DiMaggio re-examined the patient on 1/24/18. The patient made the same complaints. He had the same examination findings. On that date, Dr. DiMaggio conducted electrodiagnostic testing of the upper and lower extremities. The studies revealed right C5 and right L5/ S1 radiculopathy.

The claimant appeared for a chiropractic/acupuncture insurance examination with John Johnson, D.C., L.Ac on 3/19/18. The claimant reported he was attending physical therapy, chiropractic treatment, massage and acupuncture 3-5 times a week. On the date of the examination, he complained of headaches, neck pain, low back pain, shoulder pain and right hip pain. The chiropractic examination was completely within normal limits. The TCM examination of the tongue and pulse was normal. There was no Qi and Blood stagnation. Dr. Johnson diagnosed resolved cervical, thoracic and lumbar spine sprains, resolved bilateral shoulder sprains and resolved right hip sprain. Qi and Blood stagnation had resolved. Based upon Dr. Johnson's examination, all chiropractic/acupuncture/massage No-fault benefits were denied as of 4/6/18.

The injured party was examined in an orthopedic insurance examination by Dr. Carlos Montero on 3/19/18. The claimant reported he was receiving massage, physical therapy, acupuncture and chiropractic treatment. He complained of headaches, neck pain, mid back pain, low back pain, shoulder pain and right hip pain. There was no tenderness to palpation in the cervical, thoracic and lumbar spine, bilateral shoulders and right hip. Range of motion was within normal limits. Dr. Montero diagnosed resolved cervical, thoracic and lumbar spine sprains and resolved bilateral shoulder and left hip sprains. There was no medical necessity for additional orthopedic treatment, including physical therapy and massage. Based

upon Montero's examination, all orthopedic No-fault benefits were denied as of 4/5/18.

The claims for Acupuncture Natural Wellness, LLC for dates of service 3/5/18 - 4/4/18 were denied based upon Respondent's allegation that they were submitted more than 45 days after the dates of service. Applicant Acupuncture Natural Wellness has failed to submit proof of mailing of the claim in a timely manner. There was no reasonable justification submitted by Applicant to explain the lateness of the submission.

Applicants have all failed to rebut the findings of the IME examinations. Applicants have failed to submit examination reports contemporaneous with the IMEs. With respect to the necessity for the additional acupuncture, chiropractic, physical therapy and massage, I find for Respondent.

The nature of proof sufficient to refute medical necessity where the denials are timely issued will continue to be a question of fact in each instance. In cases where contradictory positions are raised resulting in questions of credibility, the arbitrator will have to decide whether the services provided medical benefit in that they were effective in the treatment and management of the patient and were in keeping with recognized standard of care, clinical practice guidelines and protocol.

In this matter, I find that Respondent has met its burden in establishing a defense based upon lack of medical necessity for the treatment performed from 3/5/18 - 8/14/18. Applicant has failed to respond to the Respondent's defense.

The IME reports set forth a factual basis and medical rationale for the physicians' opinion that there was a lack of medical necessity for the treatment at issue. (*Delta Diagnostic Radiology, P.C. v. Integon Natl Ins. Co.*, 24 Misc3d 136[A], 897 N.Y.S.2d 669 (App. Term, 2d, 11th & 13th Jud. Dists 2009). As Applicant failed to submit any medical evidence to rebut Respondent's showing of lack of medical necessity, Applicant's claim must fail. (*Delta Diagnostic Radiology, P.C. v. American Tr. Ins. Co.*, 18 Misc3d 128[A], 856 N.Y.S.2d (App. Term, 2d & 11th Jud. Dists 2007).

Applicant failed to raise a triable issue of fact, as it failed to proffer an affidavit from a health care practitioner which meaningfully referred to, let alone rebutted, the conclusions set forth in the IME reports. (*Pan Chiropractic, P.C. v. Mercury Ins. Co.*, 24 Misc 3d 136[A], 897 N.Y.S.2d 671, 2009 NY Slip Op 51495[U], (App Term, 2d, 11th & 13th Jud Dists. 2009)).

I find that Applicants have failed to establish their claims for reimbursement for the services performed by Acupuncture Natural Wellness, LLC, SY Wellness Massage Therapy, PC, Theraworks Physical Therapy, PC and Touch Stone Chiropractic PC.

Accordingly, these claims are denied in their 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, Toby Susan DeSimone, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/27/2019
(Dated)

Toby Susan DeSimone

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:

2e1501fdbf61f8f9244c9cec2d1f95de

Electronically Signed

Your name: Toby Susan DeSimone
Signed on: 10/27/2019