American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Munroe Chiropractic PC (Applicant)	AAA Case No.	17-18-1101-8357
	Applicant's File No.	18-14765
- and -	Insurer's Claim File No.	838268366039-00001
	NAIC No.	11215
Safeco Insurance Company Of Indiana (Respondent)		

ARBITRATION AWARD

I, Mona Bargnesi, 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: Assignor ["BR"]

1. Hearing(s) held on 11/20/2019
   Declared closed by the arbitrator on 11/20/2019

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

   Cheryl A. Krzywicki, Esq. from Safeco Insurance Company Of Indiana participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 606.25**, 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 Applicant is entitled to reimbursement for office visits and non-surgical spinal decompression treatment provided from May 17, 2018 through May 31, 2018.

   Respondent denied reimbursement based on an independent medical examination (IME) by Craig Horner, DC, LAc, dated February 6, 2018, as well as on the basis that the amount billed exceeds the fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's ADR Center as of the date of the hearing. These submissions are the record in this case.

This case arises out of a motor vehicle collision which occurred on July 25, 2017. The 58 year-old restrained driver allegedly injured her neck, back and right forearm.

Assignor sought chiropractic treatment with Aaron Mierzwa, DC, around August 8, 2017. Her complaints included numbness in the right upper extremity and bilateral lower extremities. Dr. Mierzwa found decreased range of motion and various orthopedic tests.

A cervical spine MRI obtained on October 10, 2017 revealed disc herniations at C3-4 and C5-6 and annular bulge at C6-7. A thoracic spine MRI showed an annular tear at T7-8. A lumbar spine MRI dated October 12, 2017 revealed herniations at L4-5 and L5-S1.

Assignor consulted with Cameron Huckell, MD, on December 12, 2017.

Kenneth Munroe, DC, began spinal decompression treatment, which continued through the period herein.

Medical Necessity

At a minimum, an insurer's burden on the issue of lack of medical necessity includes establishing a factual basis and medical rationale for the lack of medical necessity of the health care provider's services. Prime Psychological Services, P.C. v. Progressive Casualty Ins. Co., 24 Misc.3d 1244(A), 901 N.Y.S.2d 902 (Table), 2009 N.Y. Slip Op. 51868(U) at 3, 2009 WL 2780152 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009).

Craig Horner, DC, LAc, performed an IME on February 6, 2018. Assignor advised him that she does not feel any better than when she first started therapy; her complaints included weakness, numbness and tingling and headaches. Dr. Horner found no spasms, minimal tenderness to palpation, several negative orthopedic tests and decreased cervical and lumbar spine range of motion. He concluded that the sprains/strains were resolved and that no further causally related chiropractic treatment is warranted. He deferred comment regarding the need for prescription medication, physical therapy and surgery to the appropriate specialty.

I find that Dr. Horner's IME is insufficient to show that further treatment was not medically necessary. He states that the injuries are causally related to the incident of record but that no further causally related treatment is needed. He did not discuss the MRI findings or explain her ongoing symptoms. Dr. Huckell's report does not appear to be contained in the ADR Center file; however, Dr. Horner listed it among the medical records he reviewed and did not address the fact that Assignor consulted with him or what occurred at that visit.

Based on the foregoing, Applicant is entitled to reimbursement.

Fee Schedule

Applicant billed CPT code 97039 in the amount of $195.00 for each date of spinal decompression and submitted a "Justification of Code 97039 Billing Report" from Dr. Munroe. He states that code 97012 does not apply.

Dr. Munroe further states that:

> The only other RVU that would give the patient similar benefits to the ISCS is the actual invasive technique as surgical spinal decompression. Surgical spinal decompression codes and the fees vary depending on the procedure. Costs can range between $4000 to upward of $10,000 per level just for the surgeon alone…
>
> If I am forced by this ground rule to establish an RVU consistent in relativity with other RVU's shown in the fee schedule, the only RVU I can compare it to are the surgical RVU's. That would be applying the surgical conversion factor. The RVU's would be 1.06 RVU's at the surgical conversion factor for region II $184.12 which would total $195.00 per visit.

My colleague, Arbitrator Michelle Murphy-Louden has considered this fee schedule issue, involving the same Applicant (*See*, AAA # 17-16-1049-4638, August 23, 2018), and held, in pertinent part as follows:

> The issue with Dr. Munroe's analysis is that there is no surgical CPT code in the Surgery Fee Schedule relative to procedures performed on the spine to which has been assigned an RVU of 1.06. What Dr. Munroe did was divide the amount he charged for the disputed lumbar spine decompression by the surgical conversion factor for his region to arrive at an RVU that is not represented in the Surgery Fee Schedule for spinal procedures. I find that this does not comply with the "By Report" Ground Rule as the chosen RVU of 1.06 is not consistent in relativity with other relative units shown in the Surgery Fee Schedule for spinal procedures.
>
> According to the November 2004 CPT Assistant, "code 97012 would be the most appropriate code to report for various types of mechanical traction devices (eg, computerized/motorized) including vertebral axial depression." Despite the fact that the Integrity Spinal Care System was not in existence in 2004 it is nevertheless described by the manufacturer as being a computerized traction device which per the AMA squarely falls within the definition of CPT code 97012. The fact that the Integrity Spinal Care System can target specific spinal levels as opposed to the spine as a whole does not change the fact that it is a computerized system which is all that is necessary to establish in order for the treatment to fall within the definition of CPT code 97012. As such, I do not find merit in this specific argument by Dr. Munroe.

I also recently agreed with Arbitrator Kent Benziger and found in Matter of the Arbitration between Munroe Chiropractic, PC, and Geico Ins. Co., AAA #17-17-1075-4333 (March 6, 2019) that the "8-unit rule" applies, as code 97039. Arbitrator Benziger stated:

> The Applicant billed for the decompression pursuant to CPT 97039 which is a "By Report" code at $195.00. Although Carriers have long argued that Applicant's fail to include the required information for "By Report" codes and that this procedure should be properly coded pursuant to CPT 97012 for "Application of a modality; traction mechanical" (See November 2004 CPT Assistant "Vertebral Axial Decompression Therapy"), these issues including down-coding have not been raised by the Respondent and there is no affidavit from a certified coder. However, CPT 97039 is still a physical medicine modality listed under Chiropractic Ground Rule Three which limits reimbursement to eight units or the amount billed. Therefore, reimbursement for this decompression treatment is limited to $37.20 per session (reflecting 8.0 RVU times $4.65 which is the conversion factor in Region Two). Applicant's counsel contends that Chiropractic Ground Rule Three only applies when more than one or "multiple" modalities are being billed per session. Counsel, therefore, contends that the Applicant should be reimbursed $195.00 for spinal decompression if it was the only modality administered, but that the total for more than one modality would be $37.20. This arbitrator finds such a result illogical and contrary to the statutory intent of not only Chiropractic Ground Rule Three but the Workers' Compensation Fee Schedule.

My decision was then upheld by Master Arbitrator Frank Godson on May 14, 2019 (*see* AAA #99-17-1075-4333).

Code 97039 is subject to the 8-unit rule; therefore, the maximum amount of reimbursement per non-surgical spinal decompression treatment billed under code 97039 is $37.20 per date of service.

Therefore, Applicant's reimbursement is limited to $132.85 ($37.20 x 3 plus an office visit in the amount of $21.25).

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**
	Munroe Chiropractic PC	**05/17/18 - 05/31/18**	**$606.25**	**Awarded: $132.85**
Total			**$606.25**	**Awarded: $132.85**

B. The insurer shall also compute and pay the applicant interest set forth below. 07/23/2018 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.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). 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, Mona Bargnesi, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

12/18/2019
(Dated)

Mona Bargnesi

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:
2a73807935082d2ab914424b69c96494

Electronically Signed

Your name: Mona Bargnesi
Signed on: 12/18/2019