American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brefni Chiropractic Diagnostics PC (Applicant)	AAA Case No.	17-19-1119-1770
	Applicant's File No.	DK18-66880
- and -	Insurer's Claim File No.	0497309954 2EN
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Amanda R. Kronin, 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: FA

1. Hearing(s) held on 06/10/2020
   Declared closed by the arbitrator on 06/10/2020

   Henry Guindi, Esq from Korsunskiy Legal Group P.C. participated by telephone for the Applicant

   James McNamara, Esq from Law Offices Of Karen L Lawrence participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,019.48**, 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 Assignor, FA, a 50-year-old female, was involved in a motor vehicle accident on 4/03/18. At issue in this case are claims submitted on behalf of Applicant for upper pF-NCS testing performed on 04/24/18 in the amount of $1019.18. The Respondent denied the claim based on the peer review report by Kevin Portnoy, DC dated 6/04/18. The issue presented is whether the treatment was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

A health care provider Applicant establishes its prima facie entitlement to No-Fault benefits by submitting proof that its claim, on the statutory billing form, was mailed and received by the insurance company and that payment is overdue. Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y. 3d 498, 14 N.Y.S. 3d 283 (2015). Once Applicant has established a prima facie case, and in order to rebut the presumption of medical necessity, the burden then shifts to insurer-Respondent to present sufficient evidence to establish a lack of medical necessity for the services rendered. The insurer bears the burden of production. Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 13 Misc. 3d 136(A), 831 N.Y.S.2d 351(Table)(App. Term 1st Dept. 2006).

Respondent's evidence established that the claim was timely denied on a peer review byKevin Portnoy, DC dated 6/04/18. Dr. Portnoy reviewed records including evaluation reports, treatment notes, and diagnostic test reports. He then summarized the treatment of the Assignor. The No-Fault carrier may rebut the inference of medical necessity by providing proof that the claimed healthcare benefits were not medically necessary. A. Khodadadi Radiology, P.C. v. New York Central Mutual Fire Ins Co., 16 Misc 3d 131(A), 841 N.Y.S.2d 824, 2007 N.Y. Slip Op 51342(U) (App Term, 2nd Dept - 2007); Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 21 Misc 3d 142(A), 2008 NY Slip Op 52450(U) (App Term, 2nd Dept - 2008); Delta Diagnostic Radiology, P.C. v. Integon Natl. Ins. Co., 2009 NY Slip Op 51502(U) (App Term, 2nd Dept - 2009). Where the No-Fault carrier's proof consists of a peer review report, that report must be predicated upon a sufficient factual basis and medical rationale. AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 50208(U), 22 Misc 3d 133(A) (App Term, 2nd Dept - 2009).

Dr. Portnoy 's report relied upon cited articles stating the generally accepted standard of care in the medical community. He opined that medical necessity had not been established. Dr. Portnoy stated that: this type of testing cannot provide any information about the location or age of a lesion in the sensory peripheral pathways. A comprehensive neurological evaluation provides the same information regarding sensory findings and is used in the clinical management of claimants. The claimant was started on a course of chiropractic care, which included chiropractic manipulation. If the treating chiropractor was concerned with a neurological pathology that required surgery he would not be performing chiropractic manipulation. Quantitative sensory tests (QST) are techniques employed to measure the intensity of stimuli needed to produce specific sensory perceptions. They are used to evaluate the sensory detection threshold or other sensory response from supra-threshold stimulation. The common physical stimuli are touch, pressure, vibration, coolness, warmth/cold pain and heat. In QST, the subject must be able to comprehend what is being asked by the examiner, they must be alert and not taking any mind altering medications and not bias to certain tests outcome. Abnormal or elevated QST measurements are not specific in the diagnosis of any particular type of neuropathy, and in fact do not necessarily indicate any form or peripheral neuropathy.

Further, Dr. Portnoy cited to medical literature in support of his statements and conclusions. I find the report predicated upon a sufficient factual basis and medical rationale. Seeâ¯AJS Chiropractic, P.C. v. Mercury Ins. Co.â¯supra.

Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See,â¯Bronx Expert, supra. In order for an applicant to prove that the disputed expenses were medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. Ortho-Med Surgical Supply, Inc. v. Progressive Cas. Ins. Co., 2012 NY Slip Op 50149(U) (App Term 2d, 11th & 13th Jud Dists Jan. 24, 2012; High Quality Medical, P.C. v. Mercury Ins. Co., 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010).

Applicant relied upon a rebuttal by Craig Fishler, DC. Dr. Fishler stated that the performance of these tests was not dependent on the presence of neurological deficits. The information obtained from the testing would

confirm or rule out the existence of more serious injuries that could not diagnosed by history or examination. He also stated that the testing was performed to determine the source of the Assignor's pain and not to determine radiculopathy and neuropathy. Most of his rebuttal offered a general discussion about Pf-NCS testing. Indeed, it does not address why the Applicant chose not to pursue EMG/NCV testing.

The actual records fail to rebut any of the arguments set forth by Dr. Portnoy in the peer review report. They are handwritten and barely legible. I find Dr. Portnoy's peer review persuasive on the issue. Dr. Fishler failed to state in his rebuttal what specific findings led him to conclude that the testing was necessary for this particular patient. The underlying medical records certainly do not provide that information. I therefore, find for the Respondent. Applicant's claim is denied.

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

06/13/2020
(Dated)

Amanda R. Kronin

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:
79662522541733d86d395c8c8d80fb15

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 06/13/2020