American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Allstate Chiropractic PC (Applicant)	AAA Case No.	17-19-1123-2404
	Applicant's File No.	n/a
- and -	Insurer's Claim File No.	0574383040101038
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Bryan Hiller, 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

1. Hearing(s) held on 06/30/2020
   Declared closed by the arbitrator on 06/30/2020

   Rajesh Barua, Esq. from Ratsenberg & Associates, P.C. (Long Island) participated in person for the Applicant

   Nico Dilullo, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 704.10**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed in the Arbitration Request, $704.10, was AMENDED at the oral hearing to $369.92 pursuant to Applicant's withdrawal of first two dates of services, the fee schedule and consent of the parties.

   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 the fees associated with fi chiropractic treatments Assignor attended between October 27, 2018 and December 17, 2018 in connection with injuries allegedly sustained in a motor vehicle accident on

August 7, 2018 in light of the Respondent's Independent Medical Examination performed by Chiropractor Dr. Eric Littman on October 16, 2018?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with chiropractic treatments from October 27, 2018 to December 17, 2018 performed in connection with injuries allegedly sustained by Assignor in a motor vehicle accident on August 7, 2018. The chiropractic treatments at issue were denied following an Independent Medical Examination (IME) by Chiropractor Dr. Eric Littman conducted on October 16, 2018 at Respondent's behest after which all treatment was effectively cut-off on October 27, 2018. All denials were timely. This decision is based upon the written submissions of counsel for the respective parties as well as oral arguments at the June 30, 2020 hearing. I have reviewed the documents contained in the Record as of the date of the hearing. At the hearing, Respondent's representative stated that following the amendment to the claim amount it was no longer pursuing a fee schedule defense, so I deem that defense abandoned.

Assignor, a then 32 year old female restrained driver, was involved in an automobile accident on August 7, 2018. Following the accident, Assignor was taken to the emergency room at Kings County Hospital where she was evaluated, treated and released. When symptoms persisted, Assignor came under the care of multiple conservative care providers including Applicant Allstate Chiropractic PC. At the initial evaluation on August 15, 2018, Assignor's complaints referable to the accident included pain in the neck, mid-back, lower back, left arm and left leg. On examination, the treating provider noted reduced ranges of motion throughout the cervical and lumbar spines, normal reflex and muscle strength function but sensory deficits in the C6-C7 and S1 dermatomes and positive provocative orthopedic testing including Spinous Percus, Distraction, Jackson, Max Cervical Root Compression, Cervical Compression, Soto Hall, Shoulder Depression, Minor's, Ely's, Kemps and Lasegue's tests. Following the evaluation, Assignor was started on a course of chiropractic care. The chiropractic treatments at issue were provided by Applicant Allstate Chiropractic PC's facility between August 28, 2018 and December 17, 2018 and the notes related to the treatments are attached to the record.

I find that Applicant established a prima facie case of entitlement to reimbursement of its claim by timely submitted valid bills for the chiropractic treatments in question (see Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Since Respondent's denials were timely, it was within its rights to assert that further treatment was medically unnecessary (see Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co., 2002 NY Slip Op 40420(U), 2002 WL 31108069 (App. Term 2d & 11th Dists. June 27, 2002).

On October 16, 2018, Chiropractor Dr. Eric Littman conducted an IME at the request of Respondent. Thereafter, no fault benefits were terminated effective October 27, 2018. At the time of the examination, Assignor's complaints referable to the accident included

discomfort in the neck, back and right knee with occasional tingling of the hands. On examination, Dr. Littman noted no spasm, no hypertonicity, no pain response to percussion of the spinous processes, normal ranges of motion, negative orthopedic testing and normal neurologic function in the upper and lower extremities including no sensory deficits, no weakness and equal and bilateral present deep tendon reflex function throughout the cervical and lumbosacral spines. Following the evaluation and review of the available medical records, Dr. Littman diagnosed resolved sprain/strain of the cervical and lumbar spines and determined that there was no further need for chiropractic treatment, including manipulations, massage therapy, diagnostic testing, household help, special transportation or medical supplies.

An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards (see Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services (see Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008)). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied (see AJS Chiropractic, P.C. v. Mercury Ins. Co.,22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002)), as the ultimate burden of proof on the issue of medical necessity lies with the claimant (see Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994)).

If the insurer presents sufficient evidence establishing a lack of medical necessity, then the burden shifts back to the Applicant to present its own evidence of medical necessity (see West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc3d 131A (2006)). Once the insurer [Respondent] makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, "[Applicant] must rebut it or succumb" (see Bedford Park Med. Practice P.C. v American Transit Tr. Ins. Co., 8 Misc. 3d 1025 (A), 2005, 2005 NY Slip Op 51282 citing Bauman v Long Island Railroad, 110AD2d 739, 741, [2d Dept 1985]). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts (see Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19 (App. Term 2d, 11 & 13 Dists. 2012)).

Applicant submitted the rebuttal of treating chiropractor Dr. David Binder, DC dated August 19, 2019. Initially, Dr. Binder pointed to the MRIs which revealed straightening of the physiologic lordosis, C5-C6 left lateral disc herniation narrowing the neural foramen and abutting the nerve root and suspicion of rotator cuff tear. Dr. Binder pointed to contemporaneous records including an evaluation on August 15, 2018 which indicated significant continued complaints of pain, significantly reduced ranges of

motion, positive orthopedic testing and neurologic testing and noted that it was necessary for the Assignor to undergo continued treatment to reach maximum recovery.

On the basis of my review of the medical evidence submitted by the parties and listening to the arguments of counsel, I find that the Applicant has met its burden of proving that there was medical necessity for the chiropractic treatment between October 27, 2018 and December 17, 2018. Applicant's contemporaneous treatment records include significant evaluations prior to performance of chiropractic adjustments and those around the time of the IME showed there were continued subjective complaints of significant pain at the time of the IME and significant findings such as positive orthopedic testing and reduced ranges of motion. These findings directly correlate to the significant findings on the numerous electrodiagnostic tests performed and the complaints at the IME but also clearly outlined the benefits of the treatment. Thus, comparing the relevant evidence presented by both parties and the above referenced medical necessity standard, I find in favor of the Applicant, and award reimbursement for the October 27, 2018 to December 17, 2018 chiropractic treatments in the full amended claim amount of $369.92.

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	Amount Amended	Status
	Allstate Chiropractic PC	08/28/18 - 09/13/18	$124.14	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	10/02/18 - 10/11/18	$122.68	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	10/31/18 - 11/08/18	$114.32	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	11/12/18 - 11/19/18	$114.32	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	11/26/18 - 11/26/18	$57.16	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	12/07/18 - 12/17/18	$171.48	$0.00	Awarded: $0.00
	Allstate Chiropractic PC	08/28/18 - 12/17/18	$704.10	$369.92	Awarded: $369.92
Total			$1,408.20		Awarded: $369.92

B. The insurer shall also compute and pay the applicant interest set forth below. 03/19/2019 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. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c).The Superintendent and the New

York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of $850." Id. The minimum attorney fee that shall be awarded is $60. 11 NYCRR §65-4.5(c). 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(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply " If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to applicant is AWARDED the following:. 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360."

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 Nassau

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

06/30/2020
(Dated)

Bryan Hiller

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:
e1594267d7be40869f3233e15aa10edc

Electronically Signed

Your name: Bryan Hiller
Signed on: 06/30/2020