

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rutland Medical, PC (Applicant)	AAA Case No.	17-19-1130-7288
- and -	Applicant's File No.	389348, 389349, 389350, 389351, 389352
American Transit Insurance Company (Respondent)	Insurer's Claim File No.	102678402
	NAIC No.	16616

ARBITRATION AWARD

I, Bonnie Link, 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: the EIP

1. Hearing(s) held on 04/21/2020, 07/20/2020
Declared closed by the arbitrator on 07/20/2020

Dave Forman, Esq. from Leon Kucherovsky Esq. participated by telephone for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 558.31**, 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

This arbitration arises out of treatment of a 27 year old male for injuries sustained in a motor vehicle accident that occurred on April 15, 2018. Applicant seeks reimbursement in the amount of \$558.31 physical therapy conducted from 11/1/18-11/7/18 (\$140.71), chiropractic conducted from 11/1/18-11/7/18 (\$129.17), manual muscle testing conducted on 11/13/18 (\$130.80), physical therapy conducted on 11/13/18 (\$64.65) and a follow-up evaluation conducted on 11/7/18 (\$92.98).

Respondent timely denied all but one of the bills based on an IME conducted by Eric Roth, M.D., conducted on August 21, 2018 and effective September 19, 2018. (The IME is also the subject of a linked claim, Rutland Medical/same EIP (NFJr.) v ATI, AAA Case #171911307313.)

There is no denial in the submissions for the PT conducted from 11/1/18-11/7/18 (\$140.71) however, there is proof of timely mailing on November 15, 2018.

A rebuttal to the IME, dated March 17, 2020, by Dr. Drora Hirsch, M.D. is submitted in the linked matter, however, is accepted and reviewed herein.

4. Findings, Conclusions, and Basis Therefor

This matter is determined after reviewing the documents contained in the electronic case folder at the closing of the file and the presentations of both sides. This matter is linked to Rutland medical/same EIP v ATI, AAA Case # 171911307313.

It is well settled that an applicant establishes its prima facie entitlement to payment by proving it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no fault benefits were overdue (see Insurance Law § 5106[a]; *Mary Immaculate Hospital v Allstate Ins. Co.* 5 A.D.3d. 742 Second Dep't 2004. A prima facie case has been established herein.

According to the submissions, the EIP was an unrestrained passenger who did not receive emergency medical treatment. A few days later he went to a local emergency room and examined for claimed injuries to his neck, lower back, shoulders and right foot. He was treated and released. Five days later, on April 20, 2018, the EIP was examined by Dr. Moy at Rutland Medical for complaints of radiating neck pain, right shoulder pain, radiating lower back pain with associated numbness and tingling in his right foot. He was examined and sent for MRIs of his cervical and lumbar spines and commenced on a regimen of physical therapy. He was re-evaluated by Dr. Moy on May 15, 2018 and based on the evaluation, Dr. Moy conducted an EMG/NCV.

The EIP was examined by Dr. Roth at the behest of the Respondent on August 21, 2018, approximately 4 months after the accident both from an orthopedic and acupuncture stand point. At that time he complained of continued pain in his neck, low back and right shoulder. He advised that he was back to work as a taxi driver after taking off some time due to the accident.

Dr. Roth reviewed the EIP's medical records, including the physical therapy, chiropractic and the acupuncture evaluations and soap notes, diagnostic testing and the psychological consult. He conducted an exam of the EIP's cervical and lumbosacral spine and right shoulder. Using a goniometer, he found full ranges of motion with no complaints of pain or evidence of spasm. Orthopedic and neurological testing was negative or normal. All indices of Traditional Chinese Medicine were normal.

Dr. Roth concluded that the patient's cervical and lumbar spine strains/sprains were resolved, that his right shoulder sprain was resolved and that there was no evidence of Qi or blood stagnation.

Based on these conclusions, the Respondent issued a general denial of future treatment effective September 19, 2019.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008). Where the claimant fails to present any evidence to refute that showing, the claim should be denied, *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).

In the instant matter, the sole basis for the Respondent's denial of future benefits is the IME report of Dr. Roth. I find Dr. Roth's examination to be thorough and persuasive and therefore sufficient to shift the Respondent's burden of proof to the Applicant. The Applicant's submissions have not established a continuing need for treatment subsequent to the benefit cut-off date.

In her rebuttal, Dr. Hirsch seems to concentrate on post-IME chiropractic treatment, while in this matter, the Respondent denied the physical performance testing based on Dr. Roth's physiatric IME. In this regard, the rebuttal is more like a peer rebuttal as opposed to an IME rebuttal. She extols the value of the testing, however, she concludes that Dr. Roth's IME did not recommend against further chiropractic treatment. She further states that the patient's records show the need for further treatment.

These records include post-IME PT treatment notes, dated 11/1/2018 through 11/13/2018, chiropractic treatment notes dated 11/1/2018 through 11/7/2-18, the subject PT testing conducted on November 1, 2018, manual muscle testing conducted on November 13, 2018 and an office visit conducted on November 7, 2018.

The rebuttal is not an effective argument, pointing only to records by date and not analyzing the information contained therein.

There is insufficient evidence in the files to support the need for further therapy or testing after the IME. Most of the records that are available are check-offs or fill-ins with substantive findings or discussions and the exams from July 9, 2018 and July 27, 2018 state that the patient is improving. Exams following the IME are either chiropractic or occur so much later after the IME as to be immaterial. They lack detail and credibility.

Accordingly, the portion of the matter involving physical therapy and testing is denied.

The claim for chiropractic is granted (\$129.17) as Dr. Roth's exam is insufficient to deny chiropractic.

The claim for PT conducted from 11/1/18-11/7/18 is granted (\$140.71) inasmuch as there is no denial and there is proof of timely mailing.

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
	Rutland Medical, PC	11/01/18 - 11/07/18	\$140.71	Awarded: \$140.71
	Rutland Medical, PC	11/01/18 - 11/07/18	\$129.17	Awarded: \$129.17
	Rutland Medical, PC	11/13/18 - 11/13/18	\$130.80	Denied
	Rutland Medical, PC	11/13/18 - 11/13/18	\$64.65	Denied
	Rutland Medical, PC	11/07/18 - 11/07/18	\$92.98	Denied
Total			\$558.31	Awarded: \$269.88

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/05/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The denial in this matter being timely issued, the Respondent shall pay the Applicant interest on the amount of first-party benefits awarded, computed from date of filing, to the date payment is made at a rate of 2% per month, simple interest (i.e., not compounded) using a 30 day month, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

As this matter was filled after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

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

08/13/2020
(Dated)

Bonnie Link

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: Bonnie Link
Signed on: 08/13/2020