

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ponce Acupuncture PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-19-1132-7587

Applicant's File No. 231792

Insurer's Claim File No. 0481819191  
2PU

NAIC No. 19232

**ARBITRATION AWARD**

I, Jeffrey Held, 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: Eligible Injured Person "EIP"

1. Hearing(s) held on 08/14/2020  
Declared closed by the arbitrator on 08/14/2020

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Kevin Davis, Esq. from Law Offices of John Trop participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,490.81**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amended disputed balances \$2,297.53, based on a partial withdrawal of the claim.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether Applicant, as assignee of the EIP, a 21-year old female with a history of a November 11, 2017 motor vehicle accident as a front seat passenger with causally related injuries that include, inter alia, a thoracic sprain/strain has established entitlement to reimbursement of a claim in

the amount of \$2490.81 covering health service benefits that includes acupuncture treatment for dates of service ranging from November 20, 2017 to September 26, 2018, partially denied in a concededly timely manner based, in part, on fee schedule and an independent chiropractic and acupuncture examination performed February 26, 2018 by Philip Cilio, DC., M.S, L.Ac, ("IME), resulting in a March 22, 2018 cutoff.

#### 4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR 65-4.5 (o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

This award is rendered based upon the documents that appear in the ADR center, as well as the arguments made at the time of the hearing. There were no witnesses at the hearing.

Succinctly stated, Applicant, as assignee of the EIP, 21-year-old female with a history of a November 11, 2017 motor vehicle accident, commenced this proceeding for reimbursement of a claim for health service benefits that includes, inter alia, acupuncture treatment and infrared light treatment, covering dates of service November 20, 2017 through September 26, 2018, as fully depicted on the 19 bills delineated on Part 3 of the AR-1. At the time of the hearing, inter alia, Applicant withdrew its claim for three dates of service in the first bill, viz: November 20, 2017, November 21, 2017 and November 22, 2017, as well as for date of service March 21, 2018, the latter being the first date of service depicted on bill 5 on the AR-1. The foregoing left an amended disputed balance on bill one of \$58.72 and \$90.86 on bill five, reducing the total disputed balance to \$2297.53. Said amended balance covers a total of \$176.16, as depicted on bills one through four, that was denied, in substance, on an eight (8) unit fee schedule defense, conceded to be unsubstantiated, with the remaining portion of the extant claim denied on Dr. Cilio's February 26, 2018 IME.

Turning first to the IME, it is noted that at the time of the examination the EIP, a restrained front seat passenger at the time of the accident who reportedly sustained multiple injuries to the mid back, chest, left leg and

right knee, reported current complaints of back and leg pain as well as headaches. The EIP further reported that she was working as a full-time scanner at a factory at the time of the accident, lost one month in lost time for less wages and was currently working. Examination findings, including, inter alia, detailed ranges of motion proved substantially unremarkable. The doctor's diagnosis/prognosis included, inter alia: "Resolved thoracic, left leg and right knee sprain/strain injuries from the acupuncture perspective; there is no evidence of components of Qi and/or blood stagnation of the channels."

Applicant commenced this proceeding relying, in part, on bills, initial acupuncture report, acupuncture progress notes and acupuncture evaluation reports.

In a supplemental submission, Applicant uploaded, inter alia, a combined letter of medical necessity/rebuttal from Maittes Romero, L.AC, dated February 19, 2020, with supporting hospital chart and treatment records and reports.

While Applicant's supplemental submission was marked late, same will be considered in the absence of any objection and/or motion to preclude, as well as the exercise of this arbitrator's discretion based, in part, on the ground that the supplemental submission was made at least 30 days prior to the hearing.

Based upon the evidence adduced in this claim, as well as any arguments and/or concessions made at the time of the hearing, I make the following findings and award:

Initially, I find that the opinion rendered in the IME report is credible based, in part, upon the breadth of unremarkable examination findings depicted therein. Further, I find that the Respondent reasonably relied on said IME in terminating pertinent treatment benefits effective March 22, 2018.

The foregoing notwithstanding, based upon the persuasive weight of the rebuttal, coupled with the credibility of the Applicant's evaluation and treatment records, albeit limited to the extent memorialized in formulaic records and reports to which I ascribe limited probative and evidentiary value, I will extend the cutoff date to cover treatment through April 30, 2018.

In sum, Applicant is awarded a total of \$747.50, \$176.16 of which covers the pre-IME cutoff portion of the claim.

Award for Applicant in the amount of \$747.50, plus interest and attorney's fees, in accord with LMK Psychological Services PC v. State Farm Mutual Auto Insurance Company, 12 N.Y. 3d 217, 879 N.Y.S. 2d 14 (2009), and as computed as per opinion letter of the Office of General Counsel of the NY Insurance Department No. 3-10-04 [Oct. 2003]. Applicant is further awarded return of filing fee. Any further issue raised in the hearing record is held to be moot and/or waived insofar as not raised at the hearing.

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
	Ponce Acupuncture PC	11/20/17 - 11/30/17	\$211.02	\$58.72	Awarded: \$58.72

	<b>Ponce Acupunctu re PC</b>	<b>12/04/17 - 12/14/17</b>	<b>\$58.72</b>		<b>Awarded: \$58.72</b>
	<b>Ponce Acupunctu re PC</b>	<b>12/18/17 - 12/27/17</b>	<b>\$29.36</b>		<b>Awarded: \$29.36</b>
	<b>Ponce Acupunctu re PC</b>	<b>01/08/18 - 01/11/18</b>	<b>\$29.36</b>		<b>Awarded: \$29.36</b>
	<b>Ponce Acupunctu re PC</b>	<b>03/21/18 - 03/29/18</b>	<b>\$131.84</b>	<b>\$90.86</b>	<b>Awarded: \$90.86</b>
	<b>Ponce Acupunctu re PC</b>	<b>04/03/18 - 04/11/18</b>	<b>\$187.50</b>		<b>Awarded: \$187.50</b>
	<b>Ponce Acupunctu re PC</b>	<b>04/17/18 - 04/30/18</b>	<b>\$292.98</b>		<b>Awarded: \$292.98</b>
	<b>Ponce Acupunctu re PC</b>	<b>05/01/18 - 05/24/18</b>	<b>\$416.09</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>05/10/18 - 05/10/18</b>	<b>\$26.41</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>06/14/18 - 06/14/18</b>	<b>\$26.41</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>06/14/18 - 06/28/18</b>	<b>\$169.93</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>07/05/18 - 07/11/18</b>	<b>\$93.75</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>07/25/18 - 07/25/18</b>	<b>\$26.41</b>		<b>Denied</b>

	<b>Ponce Acupunctu re PC</b>	<b>07/25/18 - 07/30/18</b>	<b>\$93.75</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>08/01/18 - 08/15/18</b>	<b>\$278.30</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>08/28/18 - 08/29/18</b>	<b>\$93.75</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>09/12/18 - 09/26/18</b>	<b>\$243.16</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>09/14/18 - 09/14/18</b>	<b>\$55.66</b>		<b>Denied</b>
	<b>Ponce Acupunctu re PC</b>	<b>09/14/18 - 09/14/18</b>	<b>\$26.41</b>		<b>Denied</b>
<b>Total</b>			<b>\$2,490.81</b>		<b>Awarded: \$747.50</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/19/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The interest rate shall be 2% per month, simple, on a pro rata basis using a 30 day month. The insurer shall compute and pay Applicant from June 19, 2019, the date of filing, to the date of payment of the award.

C. Attorney's Fees

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

As this matter was filed 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 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 New York

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

09/05/2020

(Dated)

Jeffrey Held

#### **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:**  
6b95ab044fcef305d608cd924d3476cf

### **Electronically Signed**

Your name: Jeffrey Held  
Signed on: 09/05/2020