

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NGM Acupuncture PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-18-1103-0408

Applicant's File No. GS-707662

Insurer's Claim File No. 0477480628

NAIC No. 29688

ARBITRATION AWARD

I, Marcelle Brandes, 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 10/13/2020
Declared closed by the arbitrator on 10/13/2020

Nicole Montrony, Esq., from Law Offices Of Gabriel & Shapiro, LLC. participated by telephone for the Applicant

Sharon Basiratmand, Esq., from Law Offices Of Karen L. Lawrence participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 389.83**, 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

Applicant's Assignor, a 58 year old male, was reportedly injured in a motor vehicle accident on October 4, 2017. At issue here, Applicant seeks No Fault benefits for acupuncture treatments, dates of service April 11, 2018 through April 27, 2018. Respondent denied payment based upon an "Independent Medical Examination" (IME) on January 31, 2018 by John Iozzio, DC, LAC, based upon which the insurer cut off benefits effective February 20, 2018.

4. Findings, Conclusions, and Basis Therefor

The arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. 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. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

This decision is based upon the oral arguments and written submissions of the respective parties. No witnesses appeared or testified at the hearing. I have reviewed the documents submitted to the ADR Center as of the date the record was closed.

Applicant established a prima facie case by proof that it submitted its claim, setting forth the fact and the amounts of the losses sustained, and that payment of no-fault benefits was overdue (see Insurance Law § 5106[a]; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc.3d 128[A], 2003 N.Y. Slip Op 51701[U] [App Term, 2d & 11th Jud Dists]).

Respondent denied Applicant's claim based upon a negative "Independent Medical Examination" (IME). A presumption of medical necessity attaches to an Applicant's timely submission of proper claim forms, and the burden then switches to the respondent to demonstrate the lack of medical necessity. *Acupuncture Prima Care, P.C. v. State Farm Mutual Auto Ins.*, 17 Misc 3d 1135[A], 851 N.Y.S.2d 67 (Dist. Ct., Nassau Co. 12/3/2007); *A.B. Medical Services, PLLC v. NY Central Mutual Fire Ins. Co.*, 7 Misc 3d 1018[A], 801 N.Y.S.2d 229 (Civil Ct. Kings. Co. 2005); *Citywide Social Work & Psychological Services v. Travelers Indemnity*, 3 Misc 3d 608, 609, 777 N.Y.S.2d 241 (Civil Ct., Kings Co. 2004). The insurer bears "both the burden of production and the burden of persuasion with respect to the medical necessity of the treatment or testing for which payment is sought." See, *Bajaj v. Progressive Ins. Co.*, 14 Misc 3d 1202[A], 831 N.Y.S.2d 358 (N.Y.C. Civ. Ct. 2006). "At a minimum, [Respondent] must establish a factual basis and medical rationale for the lack of medical necessity of [Applicant's] services. *Nir v. Allstate*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005). "A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards." Id

Dr John Iozzio performed an acupuncture IME on January 31, 2018. Dr. Iozzio's physical and acupuncture examinations were wholly normal, and Dr. Iozzio opined further acupuncture treatment was no longer medically necessary.

Relying upon Dr. Iozzio's IME, Respondent has sufficiently established a showing that the disputed acupuncture treatments were not medically necessary. When, as here, the insurer interposes a timely denial of claim that set forth a sufficiently detailed factual basis and medical rationale for the claim's rejection, the presumption of medical necessity is rebutted and the burden shifts back to the claimant to ... prove the necessity of the disputed services. *Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 2008 NY Slip Op 50347(U) (App. Term 2d Dept., Feb. 26, 2008).

Applicant submits an examination report dated March 2, 2018, but does not submit reports contemporaneous to the IME.

Based on the totality of the evidence, I find Respondent has established its defense and Applicant has failed to refute it. Accordingly, 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 Bronx, New York

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

11/07/2020
(Dated)

Marcelle Brandes

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:
bffc3b97aa6c54abee6c884b107fe64b

Electronically Signed

Your name: Marcelle Brandes
Signed on: 11/07/2020