

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Colin Clarke MD PC , Queens Medical
Diagnostic PC
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No.	17-19-1146-8053
Applicant's File No.	N/A
Insurer's Claim File No.	19-5613131
NAIC No.	32786

ARBITRATION AWARD

I, Paul Israelson, 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: injured person.

1. Hearing(s) held on 11/16/2020
Declared closed by the arbitrator on 11/16/2020

Roman Kulik Esq. from Kulik Law Firm, PC participated by telephone for the Applicant

Jamila Shukri Esq. from McCormack, Mattei & Holler participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 7,127.77**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant Queens Medical Diagnostic PC amended its claim to \$3,490.10.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties agreed that, with this claim amended to \$3,490.10, the applicant Queens Medical Diagnostic PC's claim had been submitted in accordance with the fee schedule.

3. Summary of Issues in Dispute

Were the subject lumbar trigger point injection procedures and review of EMG NCV testing medically necessary?

May the respondent deny a portion of the applicant Clarke's claim on the basis that the applicant failed to provide the respondent with proof of the subject no-fault claim within 45 days from the date the applicant rendered the subject medical service, as required by 11 NYCRR 65-1.1?

Did the respondent properly reduce the applicant Clarke's claim in accordance with the New York Worker's Compensation Fee Schedule ("fee schedule")?

May the respondent defend against the applicant Queens' claim on the basis that the applicant was not properly licensed to perform the subject EMG NCV testing, and therefore, does not have standing or capacity to receive no-fault recovery for the subject EMG NCV testing?

Did the respondent stay its 30 day period to pay or deny the applicant Queens' claim on the basis that the applicant failed to provide requested additional verification?

4. Findings, Conclusions, and Basis Therefor

On November 16, 2020, the hearing for the within arbitration matter was conducted and closed.

At the hearing, the applicant did not raise any argument as to the timeliness of the respondent's denials of the applicants' claims.

The date of the subject automobile accident was February 12, 2019.

The applicant Colin Clarke M.D. PC ("Clarke") made a claim for the left trapezius trigger point injection procedure, review of left shoulder MRI, lumbar trigger point injection procedures and review of EMG NCV testing during the period of February 22, 2019 to July 1, 2019, breaking down as follows:

\$88.25 for the February 22, 2019 physical examination and left trapezius trigger point injection procedure;

\$204.41 for the March 26, 2019 review of the injured person's left shoulder MRI;

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure.

The respondent reduced the applicant Clarke's claim in the amount of \$554.91 for the February 22, 2019 physical examination and left trapezius trigger point injection procedure by \$88.25 and paid the applicant Clarke \$466.66 on the basis that the applicant Clarke's claim was not submitted in accordance with the fee schedule.

The applicant Clarke is seeking recovery of the unpaid \$88.25.

The respondent denied the applicant Clarke's claim in the amount of \$204.41 for the March 26, 2019 review of the injured person's left shoulder on the basis that the applicant Clarke failed to provide the respondent with proof of the subject no-fault claim within 45 days from the date the applicant Clarke rendered the subject medical service, as required by 11 NYCRR 65-1.1; specifically indicating in its NF-10 denial form that it received the applicant's invoice for its claimed medical services on May 15, 2019, obviously beyond the 45 day period required by 11 NYCRR 65-1.1.

The applicant Clarke is seeking recovery of the unpaid \$204.41.

The respondent denied the portion of the applicant Clarke's claims as follows:

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure;

all on the basis that the subject medical services were not medically necessary.

The applicant Clarke is seeking recovery of the following:

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure.

The applicant Queens Medical Diagnostic PC ("Queens") made a claim in the amended amount of \$3,490.10 for the April 25, 2019 EMG NCV testing of the injured person's upper extremities and lower extremities.

The respondent has neither paid nor denied the applicant Queens' claim, and is defending against the applicant Queens' claim on the basis that the applicant Queens has not yet provided additional verification requested by the respondent.

Additionally, the respondent is defending against the applicant Queens' claim on the basis that the applicant Queens was not properly licensed to perform the subject EMG NCV testing, and therefore, does not have standing or capacity to receive no-fault recovery for the subject EMG NCV testing.

**FEE REDUCTION OF THE APPLICANT CLARKE'S CLAIM FOR THE
FEBRUARY 22, 2019 PHYSICAL EXAMINATION AND LEFT TRAPEZIUS
TRIGGER POINT INJECTION PROCEDURE:**

As stated above, the respondent reduced the applicant Clarke's claim in the amount of \$554.91 for the February 22, 2019 physical examination and left trapezius trigger point injection procedure by \$88.25 and paid the applicant Clarke \$466.66 on the basis that the applicant Clarke's claim was not submitted in accordance with the fee schedule.

The applicant Clarke is seeking recovery of the unpaid \$88.25.

The respondent provided the December 5, 2019 fee schedule analysis by Darlene Buttner CPC, the respondent's fee schedule analyst, in support of the respondent's reduction of the applicant Clarke's claim for the February 22, 2019 physical examination and left trapezius trigger point injection procedure. Ms. Buttner noted that the applicant billed under CPT code 99244 for the February 22, 2019 physical examination, reviewed the fee schedule criteria for CPT code 99244, reviewed the applicant Clarke's documentation for the February 22, 2019 physical examination and determined that CPT code 99204 more accurately applied to the applicant Clarke's February 22, 2019 physical examination.

Ms. Buttner then determined that the relative value unit for CPT code 99204 is \$13.53 and that the applicable conversion factor for the location where the February 22, 2019 physical examination took place is \$10.99, thus yielding a fee of \$148.69 for the February 22, 2019 physical examination, i.e. $\$13.53 \times \$10.99 = \$148.69$.

Ms. Buttner then noted that the applicant billed \$236.94 (under CPT code 99244) for the February 22, 2019 physical examination. In that Ms. Buttner determined that the February 22, 2019 physical examination should have been billed under CPT code 99204 with a fee in the amount of \$148.69, Ms. Buttner reduced this same portion of the at applicant Clarke's fee by \$88.25 so as to remain in accordance with the fee schedule, i.e. $\$236.94 - \$88.25 = \$148.69$.

In response to Ms. Buttner's fee analysis, at the hearing, the applicant described in detail the specific component parts of CPT code 99244 and correlated those same component parts to the medical services rendered by the applicant Clarke at the February 22, 2019 physical examination, and persuasively argued that the medical services provided by the applicant Clarke at this same physical examination comported with all of the component parts of CPT code 99244, and as such, persuasively argued that the applicant Clarke properly billed under CPT code 99244 for this same physical examination.

Consequently, the applicant Clarke's claim in the amount of \$88.25 for the February 22, 2019 physical examination and left trapezius trigger point injection procedure is awarded.

DENIAL OF THE APPLICANT CLARKE'S CLAIM IN THE AMOUNT OF \$204.41 FOR THE MARCH 26, 2019 LEFT SHOULDER MRI ON THE BASIS THAT THE APPLICANT CLARKE VIOLATED THE 45 DAY RULE:

As stated above, the respondent denied the applicant Clarke's claim in the amount of \$204.41 for the March 26, 2019 review of the injured person's left shoulder on the basis that the applicant failed to provide the respondent with proof of the subject no-fault claim within 45 days from the date the applicant rendered the subject medical service, as required by 11 NYCRR 65-1.1; specifically indicating in its NF-10 denial form that it received the applicant's invoice for its claimed medical services on May 15, 2019, obviously beyond the 45 day period required by 11 NYCRR 65-1.1.

The applicant Clarke is seeking recovery of the unpaid \$204.41.

The applicant supplied its list of mailing no-fault claims indicating that, on May 8, 2019, the applicant mailed to the respondent proof of claim for certain medical services provided to the injured person on certain dates of service, however, this same list of mailing no-fault claims did not specify the particular no-fault claim, the medical service provided to the injured person or the date of service for any medical service provided to the injured person. As such, this same list of mailing no-fault claims did not serve as sufficient evidence demonstrating the applicant Clarke's mailing of its proof of claim for the March 26, 2019 review of the MRI of the injured person's left shoulder.

It is well settled that, where an applicant for no-fault benefits submits its proof of claim or invoice for medical services to an insurer on a date later than 45 days from the date it rendered those same medical services, the applicant has violated 11 NYCRR 65-1.1, and unless the applicant has provided a reasonable justification for the late submission of their claim or invoice (said reasonable justification permitted by 11 NYCRR 65-3.3 [e]), the claim can be denied by the insurer as untimely submitted, cf. "The Supreme Court correctly granted the branch of the defendant insurer's cross motion which was for summary judgment dismissing the first cause of action, asserted on behalf of the plaintiff St. Vincent's Hospital & Medical Center (hereinafter St. Vincent's), as the defendant established that St. Vincent's failed to submit its claim within 45 days after rendition of medical services (see 11 NYCRR 65-1.1) St. Vincent's legal and factual arguments in opposition are without merit", *St. Vincent's Hosp. & Medical Center v. Country Wide Ins. Co.* 24 A.D.3d 748, 809 N.Y.S.2d 88 (2nd Dept. 2005).

"In view of the foregoing, defendant's motion for partial summary judgment dismissing the first, second, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth causes of action asserted in the complaint should have been granted since it was undisputed that defendant's timely denial of claim forms denied the subject claims based upon plaintiff's failure to submit said claims within 45 days after the date the services were rendered and the record reveals that plaintiffs failed to proffer admissible evidence demonstrating that there was a "reasonable justification" for the untimely submission of the claims (*St. Vincent's Hosp. & Med. Ctr. v. Country Wide Ins. Co.*, 24 AD3d 748 [2005]; *Nir v. MVAIC*, 17 Misc.3d 134[A], 2007 N.Y. Slip Op 52124[U] [App Term, 2d & 11th Jud Dists 2007]; *NY Arthroscopy & Sports Medicine PLLC v. Motor Veh. Acc. Indem. Corp.*, 15 Misc.3d 89 [App Term, 1st Dept 2007])", *Eagle Chiropractic, P.C. v. Chubb*

Indem.Ins. Co. 19 Misc.3d 129(A), 859 N.Y.S.2d 902 (Table) (App. Term 9th and 10th Dist. 2008).

"The record reveals that the health care services herein were rendered to plaintiff's assignor on July 31, 2003. MVAIC received plaintiff's proof of claim on March 30, 2004, eight months after the date the services were rendered. Attached to plaintiff's proof of claim was correspondence indicating that plaintiff had made an "accidental submission" to State Farm Insurance Company in August 2003; a facsimile, dated September 23, 2003, transmitting State Farm's cancellation notice of its policy effective January 3, 2003; and a December 18, 2003 letter to plaintiff from its attorney stating that the attorney was no longer looking to State Farm for payment of the bill because there was "no policy." MVAIC ultimately denied the claim based on plaintiff's untimely submission of proof of claim and afforded plaintiff the opportunity to provide a "reasonable justification" for the delay (see 11 NYCRR 65-3.3 [e]; Matter of Medical Society of the State of New York v. Serio, 100 N.Y.2d 854, 863, 768 N.Y.S.2d 423, 800 N.E.2d 728 [2003]). Defendant's motion for summary judgment was properly granted. Even assuming, arguendo, that plaintiff's inadvertent submission of the claim to State Farm initially justified its delay in submitting the claim to MVAIC (see 11 NYCRR 65-3.5[1]), plaintiff failed to address, much less provide a "reasonable justification" for the three-and-a-half month delay between December 18, 2003, when plaintiff's counsel advised plaintiff that there was no coverage, and plaintiff's submission of the claim to MVAIC on March 26, 2004", NY Arthroscopy & Sports Medicine PLLC v. Motor Vehicle Acc. Indemnification Corp. 15 Misc.3d 89, 836 N.Y.S.2d 753 (App. Term 1st Dept. 2007).

In this case, the applicant Clarke has not supplied any proof of mailing its proof of claim for the subject medical services at any time prior to the required 45 day period, nor has the applicant Clarke provided any reasonable justification for not providing the respondent with its proof of claim for the subject medical services within 45 days from the date it conducted the subject medical services.

As such, pursuant to the above cited authorities, the portion of the applicant Clarke's claim in the amount of \$204.41 for the March 26, 2019 review of the MRI of the injured person's left shoulder is denied on the basis that the applicant failed to provide the respondent with proof of the subject no-fault claim within 45 days from the date the applicant rendered the subject medical service, as required by 11 NYCRR 65-1.1.

MEDICAL NECESSITY DEFENSE:

As stated above, the respondent denied the portion of the applicant Clarke's claims as follows:

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure;

all on the basis that the subject medical services were not medically necessary.

The applicant Clarke is seeking recovery of the following:

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure.

(Parenthetically, it is noted that the respondent did not have any issue with the fee schedule calculation for this same portion of the applicant Clarke's claim.)

As to the medical necessity for the subject medical services, "Medical necessity is presumed upon the timely submission of a no-fault claim (see All County Open MRI & Diagn. Radiology P.C. v. Travelers Ins. Co., 11 Misc.3d 131[A], 2006 N.Y. Slip Op 50318[U] [App Term, 9th & 10th Jud Dists 2006]). Thus, ordinarily it falls to the defense to establish that the billed-for services were not medically necessary.", Park Slope Medical and Surgical Supply, Inc. v. Progressive Ins. Co. 34 Misc.3d 154(A), 950 N.Y.S.2d 609 (App. Term, 2nd, 11th and 13th Dists. 2012). In this case there is no question of fact that the applicant timely submitted its proof of claim for the subject medical services, and therefore, the applicant may apply this same presumption of medical necessity to the subject medical services.

Further, "Any objection to a lack of medical necessity must be stated in a claim denial form, and must be "supported by competent evidence such as an independent medical

examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim" (Healing Hands Chiropractic, PC v. Nationwide Assur. Co., 5 Misc.3d 975, 976, 787 N.Y.S.2d 645 [Civ. Ct. N.Y. Co.2004, Kern, J.], also involving a claim for CPT compensation; see also, decisions following trial, Nir v. Allstate Ins. Co., 7 Misc.3d 544, 796 N.Y.S.2d 857 [Civ.Ct. Kings Co.2005, Matos, J.], and CityWide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 [Civ. Ct. Kings Co.2004, Battaglia, J.]). At all stages, the insurer bears the burden of proof on a medical necessity defense (see Healing Hands Chiropractic, PC v. Nationwide Assur. Co., supra; see also Lumbermens Mut. Cas Co. v. Inwood Hill Medical, P.C., 8 Misc.3d 10014(A), 2005 WL 1662041 *5, 2005 N.Y. Slip Op. 51101[U] [Sup.Ct. N.Y. Co.2005, Ramos, J].

The respondent provided the March 27, 2019 independent orthopedic examination report by Dr. Raghava Polavarapu M.D. in support of the respondent's argument that the subject medical services were not medically necessary.

Dr. Polavarapu examined the injured person's cervical spine, thoracic spine, lumbar spine, both shoulders, both elbows, both wrists/hands, both hips, both knees and both ankles and feet, and concluded that all injury resulting from the subject automobile accident had resolved except for the injured person's cervical spine sprain/strain and lumbar spine sprain/strain (specifically noting tenderness and restricted range of motion in the cervical spine, spasm, tenderness and restricted range of motion in the lumbar spine and tenderness and restricted range of motion in the left shoulder) and that the injured person was no longer in need of certain orthopedic treatment such as surgery, massage therapy, diagnostic testing, durable medical equipment or special transportation, however, he also concluded that the injured person was in need of additional physical therapy. Dr. Polavarapu noted that the injured person, a 53-year-old male, informed him that, at the time of the subject automobile accident he was not employed, and was working full time at the time of his examination. Additionally, Dr. Polavarapu noted that, at the time of his independent orthopedic examination, the injured person complained of pain in his neck radiating to his arms and hands, pain in his lower back radiating to his legs and feet and pain in his left shoulder, however, the injured person ambulated with a normal gait, was able to tip toe and heel walk, and there were no spasms, tenderness or restriction in range of motion in the areas he had examined, except as noted above. In light of the positive findings made by Dr. Polavarapu, and pursuant to the above-cited authorities, Dr. Polavarapu' March 27, 2019 independent orthopedic examination report did not sustain the respondent's burden of demonstrating that the subject medical services were not medically necessary.

The record contains the following objective test results:

1. The April 25, 2019 EMG NCV test of the injured person's upper extremities indicating evidence of carpal tunnel syndrome.

4. The April 25, 2019 EMG NCV test of the injured person's lower extremities indicating evidence of left bilateral sensorimotor peripheral polyneuropathy.

The applicant Clarke's May 24, 2019 physical examination report made reference to the following objective test results:

1. The March 11, 2019 MRI of the injured person's cervical spine indicating a disc herniation at the C4-5 level.

2. The March 18, 2019 MRI of the injured person's lumbar spine indicating a disc herniation at the L3-4 level.

The applicants provided the applicant Queens' April 25, 2019 physical examination report and the applicant Clarke's May 24, 2019 and July 1, 2019 physical examination reports all in support of the applicant Clarke's claim.

The applicant Queens' April 25, 2019 physical examination report indicates complaints of morning stiffness in the neck and intermittent lower back pain, with tenderness and restricted range of motion in the cervical spine and lumbosacral spine. The applicant Clarke's physical examination reports indicate complaints of pain in the neck, left shoulder, lower back and mid back, with tenderness, spasm and restricted range of motion in the cervical spine and lumbar spine. As such, these same physical examination reports rebut the conclusions drawn by Dr. Polavarapu as expressed in his independent orthopedic examination report.

As stated above, Dr. Polavarapu' March 27, 2019 independent orthopedic examination report did not sustain the respondent's burden of demonstrating that the subject medical services were not medically necessary.

Therefore, the applicant Clarke's claim in the amount of

\$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure;

\$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities; and

\$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure;

are all awarded.

THE LACK OF COVERAGE DEFENSE FOR THE APPLICANT QUEENS' CLAIM FOR THE APRIL 25, 2019 EMG NCV TESTING OF THE INJURED PERSON'S UPPER EXTREMITIES AND LOWER EXTREMITIES:

As stated above, the applicant Queens made a claim in the amended amount of \$3,490.10 for the April 25, 2019 EMG NCV testing of the injured person's upper extremities and lower extremities.

The respondent is defending against the applicant Queens' claim on the basis that the applicant Queens was not properly licensed to perform the subject EMG NCV testing, and therefore, does not have standing or capacity to receive no-fault recovery for the subject EMG NCV testing.

Specifically, the respondent has argued that the applicant Queens did not exist as a professional service corporation, and therefore, did not maintain the proper licensing required by law to render professional services, and as such, pursuant to 11 NYCRR 65-3.16 (a) (12), is not entitled to no-fault recovery for the subject EMG NCV testing of the injured person's upper extremities and lower extremities.

Preliminarily, it is noted that a defense based upon an applicant's failure to have a license for the medical discipline for which a claim has been made is not waived by failing to assert that same defense in a timely denial, *Multiquest, P.L.L.C. v. Allstate Ins. Co.*, 17 Misc. 3d 37, 844 N.Y.S.2d 565 (App. Term 2nd Dept. 2007); *Crossbay Acupuncture, P.C. v State Farm Mut. Auto. Ins. Co.*, 15 Misc 3d 110, 838 NYS2d 339 (App Term, 2d & 11th Jud Dists 2007); *Midwood Acupuncture, P.C. v State Farm Mut. Auto. Ins. Co.*, 14 Misc 3d 131[A], 2007 NY Slip Op 50052[U], 836 NYS2d 486 (App Term, 2d & 11th Jud Dists 2007).

With specific regard to the respondent's absence of licensing defense, 11 NYCRR 65-3.16 (a) (12) requires that a healthcare provider be licensed in New York State in order to receive no-fault benefits. In this regard, 11 NYCRR 65-3.16 (a) (12) states:

A provider of health care services is not eligible for reimbursement under section 5102(a)(1) of the Insurance Law if the provider fails to meet any applicable New

York State or local licensing requirement necessary to perform such service in New York or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.

Further, Education Law Section 6507 (4) (c) requires that the New York State Department of Education shall issue a certificate of authority to a qualified professional service corporation organized under Business Corporation Law section 1503, where it states in pertinent part:

Education Law § 6507. Administration by the education department

4. The department shall:

c. (i) Issue a certificate of authority to a qualified professional service corporation being organized under [section fifteen hundred three of the business corporation law](#) or to a university faculty practice corporation being organized under [section fourteen hundred twelve of the not-for-profit corporation law](#) on payment of a fee of ninety dollars, (ii) require such corporations to file a certified copy of each certificate of incorporation and amendment thereto within thirty days after the filing of such certificate or amendment on payment of a fee of twenty dollars, (iii) require such corporations to file a triennial statement required by [section fifteen hundred fourteen of the business corporation law](#) on payment of a fee of one hundred five dollars.

Finally, Business Corporation Law Section 1503 (b) mandates that all professional service corporations indicate the profession to be practiced by such corporation and the names and residence addresses of all individuals who are shareholders, directors and officers of such corporation, where it states in pertinent part:

§ 1503. Organization

(b) The certificate of incorporation of a professional service corporation shall meet the requirements of this chapter and (i) shall state the profession or professions to be practiced by such corporation and the names and residence addresses of all individuals who are to be the original shareholders, directors and officers of such corporation, and (ii) shall have attached thereto a certificate or certificates issued by the licensing authority certifying that each of the proposed shareholders, directors and officers is authorized by law to practice a profession which the corporation is being organized to practice and, if applicable, that one

or more of such individuals is authorized to practice each profession which the corporation will be authorized to practice.

The respondent provided evidence in the form of a computer printout from New York State indicating that, on May 9, 1991, the applicant Queens had been incorporated, and that on July 1, 2003, the applicant Queens had closed, apparently indicating that, as of July 1, 2013, the applicant Queens no longer existed as a professional service corporation.

As such, the respondent has argued that the applicant Queens cannot comply with the certificate of authority requirement of **Education Law Section 6507 (4) (c) in that, as a closed professional service corporation it is no longer maintaining the certificate of authority required by Education Law Section 6507 (4) (c), and therefore, without such mandatory certificate of authority, pursuant to** 11 NYCRR 65-3.16 (a) (12), the applicant Queens is not entitled to receive no-fault recovery. This argument is compelling because simple logic dictates that the entity seeking no-fault recovery for the subject EMG NCV testing of the injured person's upper extremities and lower extremities, to wit: the applicant Queens, closed on July 1, 2003, and therefore, did not exist as a professional service corporation on April 25, 2019, the date of the subject EMG NCV testing of the injured person's upper extremities and lower extremities. Without such existence recognized by New York State, i.e. the state in which the applicant Queens had been incorporated, it is logical that the applicant Queens cannot recover no-fault benefits.

The applicant has argued that the particular physician on behalf of the applicant Queens who performed the subject EMG NCV testing of the injured person's upper extremities and lower extremities was a licensed medical doctor at the time of such testing, and therefore, has complied with the licensing requirements of 11 NYCRR 65-3.16 (a) (12), and as such, the applicant Queens is entitled to no-fault recovery. In this regard, it is noted that this same physician in his individual capacity has not sought no-fault recovery for the subject EMG NCV testing, but rather, it is the applicant Queens who has sought no-fault recovery for the subject EMG NCV testing. Therefore, it is the applicant Queens who also must comply with the licensing requirements of 11 NYCRR 65-3.16 (a) (12) in order to be entitled to receive no-fault recovery. As noted above, the applicant Queens has not complied with such licensing requirements of 11 NYCRR 65-3.16 (a) (12), and therefore, is not entitled to no-fault recovery.

Having determined that the applicant Queens may not recover no-fault benefits for the February 25, 2019 EMG NCV testing of the injured person's upper extremities and lower extremities, I do not reach the issue as to whether or not the respondent stayed or tolled its 30 day period to pay or deny this same claim made by the applicant Queens.

I have reviewed and considered all other arguments, contentions and evidence from both the applicant and the respondent, and find them to be without merit.

In accordance with the foregoing:

the applicant Clarke's claim in the amount of \$88.25 for the February 22, 2019 physical examination and left trapezius trigger point injection procedure is awarded;

the applicant Clarke's claim in the amount of \$204.41 for the March 26, 2019 review of the injured person's left shoulder MRI is denied;

the applicant Clarke's claim in the amount of \$346.88 for the May 24, 2019 physical examination and lumbar trigger point injection procedure is awarded;

the applicant Clarke's claim in the amount of \$204.41 for the July 5, 2019 review of the EMG NCV testing of the injured person's upper extremities and lower extremities is awarded; and

the applicant Clarke's claim in the amount of \$346.88 for the July 1, 2019 physical examination and lumbar trigger point injection procedure is awarded;

for a total award of \$986.42.

the applicant Queens' claim in the amended amount of \$3,490.10 for the April 25, 2019 EMG NCV testing of the injured person's upper extremities and lower extremities 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Colin Clarke MD PC	02/22/19 - 02/22/19	\$88.25	\$88.25	Awarded: \$88.25
	Colin Clarke MD PC	03/26/19 - 03/26/19	\$204.41	\$204.41	Denied
	Colin Clarke MD PC	05/24/19 - 05/24/19	\$346.88	\$346.88	Awarded: \$346.88
	Colin Clarke MD PC	07/05/19 - 07/05/19	\$204.41	\$204.41	Awarded: \$204.41
	Colin Clarke MD PC	07/01/19 - 07/01/19	\$346.88	\$346.88	Awarded: \$346.88
	Queens Medical Diagnostic PC	04/25/19 - 04/25/19	\$5,936.94	\$3,490.10	Denied
Total			\$7,127.77		Awarded: \$986.42

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/01/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest will run from the filing date to the date of payment.

C. Attorney's Fees

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

If this matter was filed prior to February 4, 2015, the insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6 (e). If this matter was filed on or after February 4, 2015, the insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d); and in such same event, if the benefits and interest awarded thereon are 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(b).

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

11/16/2020
(Dated)

Paul Israelson

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:
400bf94bd9da820638c05197f168b525

Electronically Signed

Your name: Paul Israelson
Signed on: 11/16/2020