

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Chiropractic of Pelham Bay, P.C. (Applicant)	AAA Case No.	17-20-1155-0763
- and -	Applicant's File No.	A25266
	Insurer's Claim File No.	0405280840002
LM General Insurance Company (Respondent)	NAIC No.	36447

**ARBITRATION AWARD**

I, Karen Fisher-Isaacs, 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 11/17/2020  
Declared closed by the arbitrator on 11/17/2020

Amisha Dukarm from Munawar & Hashmat LLP participated by telephone for the Applicant

Alan Zysberg from LM General Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,082.94**, 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 seeks reimbursement of charges for upper and lower EMG/NCV testing performed on October 7, 2019 following a July 22, 2019 motor vehicle accident.  
Respondent timely denied the claim based upon Dr. John Iozzio's peer review report dated October 31, 2019
4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amount of \$2,082.94 for upper and lower EMG/NCV testing performed on October 7, 2019 for Assignor, a 53-year-old female, in connection with treating injuries sustained in a motor vehicle accident on July 22, 2019. Respondent timely denied Applicant's claim based on Dr. John Iozzio's peer review report. Applicant submitted Dr. Hal Rosenfeld's rebuttal.

I find that Applicant has established its prima facie case as Applicant has met the requirements enunciated in *Ave T MPC Corp. v Auto One Ins. Co.*, 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists 2011]). The Court held that "A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof that the defendant either failed to pay or deny the claim within the requisite 30-day period, or issued a timely denial of claim that was conclusory, vague or without merit as a matter of law (see Insurance Law § 5106 [a]; *Westchester Med. Ctr. v Nationwide Mut. Ins. Co.*, 78 AD3d 1168 [2010]; see also *New York & Presby Hosp v. Allstate* 31 AD3d 512 [2006])."

Assignor was a passenger in a motor vehicle that was involved in an accident on July 22, 2019. She was evaluated at a local ER and released the same day. She presented to Applicant on July 26, 2019 for an initial consultation. After undergoing an exam, chiropractic treatment was recommended and begun.

Dr. Rosenfeld's September 25, 2019 follow up report indicates that Assignor presented with radiating neck and back pain, decreased sensation right C5 and C7 and right L4-S1 dermatomal distributions. After reviewing Assignor's cervical and lumbar MRIs which were significant for herniated discs with neuroforaminal narrowing/ nerve impingement, Dr. Rosenfeld recommended upper and lower EMG/NCV testing to confirm radiculopathy rule out peripheral compression neuropathy.

Respondent's evidence established that it timely denied Applicant's billing based on Dr. John Iozzio's peer review report. He advised that the testing was not necessary because Assignor's treating doctors did not report any neurological deficits to warrant said testing. He states that Assignor examination findings were all consistent with cervical and lumbar radiculopathies and that this Assignor's complaints and provocative spinal orthopedic tests were consistent with neurological defects found in radiculopathy. He stated that there were no findings to suggest peripheral neuropathy. He advised that no suspected compression peripheral nerve injuries were reported by way of history nor by way of the physical examination. He advised that though radiculopathies may have been obvious, there were no findings suggestive of peripheral neuropathies. He explained that any peripheral neuropathies related to a MVA would have to be caused by physical trauma, compression, pinching, cutting or projectile injuries or strokes- scenarios not represented by Assignor's record.

The law is well settled that the burden is on the insurer to prove that medical treatment performed was not medically necessary. (See *A.B. Medical Services PLLC v. Geico Insurance*, 2 Misc.3d 26, 773 N.Y.S.2d 773 [App. Term, 2nd & 11th Jud. Dists. 2003]; *King's Medical Supply Inc. v. Country-Wide Insurance Company*, 783 N.Y.S.2d at 448). I find Dr. Iozzio's peer review report sufficient to meet this burden. It set forth a factual basis and a medical rationale, per the above-cited case law, to establish a prima facie case in support of Respondent's medical necessity defense. Dr. Iozzio referenced medical authorities and discussed Assignor's physical findings.

Thereafter, the burden shifts back to Applicant to present competent medical proof as to the medical necessity for upper and lower extremity EMG/NCV testing by a preponderance of the credible evidence. *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (See, Insurance Law Section 5102).

Applicant submitted Dr. Rosenfeld's letters of medical necessity and rebuttal to support its position that the testing was ordered in accordance with the AANEM Guidelines - to identify normal and abnormal nerve, muscle, motor or sensory neuron, and NMJ functioning." He stated that Assignor presented with cervical and lumbar pain with decreased muscle strength in the upper extremities, decreased sensory findings in the upper and lower extremities and decreases in both upper and lower extremity reflexes. Additionally, the SLR, Yoeman, Shoulder Depressor, Kemps, Milgrams and Lumbar Compressions tests were all positive on September 25, 2019, the day he ordered the testing. He stated that the testing was done "to substantiate the diagnosis of radiculopathy and to rule out other causes, specifically compressional neuropathy." Additionally, he stated that there was neurological decline and that Dr. Iozzio's statement that there was no suspected peripheral neurological insult of the upper extremities was "inaccurate." Patients with peripheral nerve injury may present with sensory deficits, loss of motor function or a combination of both and that is how Assignor presented. He stated that neuropathy is a disorder that results from damage to the nerves that often causes weakness numbness and pain. Peripheral neuropathy can affect one nerve, two or more nerve or many nerves. This Assignor presented with weakness in her foot dorsi flexor bilaterally and EHL on the right as well as weakness in her bilateral elbow and he averred that neuropathy can be from a traumatic event.

Based upon the facts of this matter, I find Applicant's evidence sufficient to establish medical necessity for the electrodiagnostic testing at issue. I find Dr. Rosenfeld's rebuttal credible and detailed in its response to the peer findings as to why the testing was necessary.

Accordingly, Applicant is awarded \$2,082.94, the entirety of its claim.

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
	<b>Advanced Chiropractic of Pelham Bay, P.C.</b>	<b>10/07/19 - 10/07/19</b>	<b>\$2,082.94</b>	<b>Awarded: \$2,082.94</b>
<b>Total</b>			<b>\$2,082.94</b>	<b>Awarded: \$2,082.94</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/28/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay Applicant interest on the total first-party benefits awarded herein, computed from January 28, 2020 (date of filing) to the date of payment of the award, but excluding January 28, 2020 from being counted within the period of interest. The interest rate shall be two percent per month, simple (i.e., not compounded), on a pro rata basis using a 30-day month.

C. Attorney's Fees

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

20% of the amount awarded.

- 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 Kings

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

11/18/2020

(Dated)

Karen Fisher-Isaacs

#### **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:**  
117d41cf58cf06e8504825ea3a682242

### **Electronically Signed**

Your name: Karen Fisher-Isaacs  
Signed on: 11/18/2020