American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Adagio Chiropractic P.C (Applicant)	AAA Case No.	17-19-1146-2058
	Applicant's File No.	61348
- and -	Insurer's Claim File No.	0499867173 2HH
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Elyse Balzer, 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: RA

1. Hearing(s) held on 09/21/2020
   Declared closed by the arbitrator on 11/23/2020

   Gitelis Law Firm from Gitelis Law Firm, PC participated by written submission for the Applicant

   Law Offices of Karen L. Lawrence from Law Offices Of Karen L. Lawrence participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,830.97**, 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 claims for chiropractic treatments rendered between 5/1/18 and 1/3/19 to the 20-year-old male eligible injured person, RA, who sustained injuries as a bicyclist struck by a motor vehicle on 4/222/18.

   The issues are:

   Has respondent proven that it properly reimbursed applicant for the services of 5/1/18 through 9/17/18, based on the fee schedule; and

Has respondent proven the lack of medical necessity of continued chiropractic treatment rendered on and after 9/17/18, based on an IME conducted by Dr. John Iozzio, DC.

Respondent did not raise any issue of exhaustion in its written submissions.

There was no fee schedule issue.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

This arbitration was resolved on the basis of written submissions of the parties.11 NYCRR §65-4.5(a)

4. Findings, Conclusions, and Basis Therefor

On 5/1/18, Dr. Nathaniel Mazza, DC, of applicant's facility, conducted an initial chiropractic evaluation of RA and commenced chiropractic treatment.

Fee schedule

Respondent partially paid applicant for four bills embodying claims for services rendered between 5/1/18 and 9/6/18.

Respondent paid in full for the initial evaluation of 5/1/18.

Respondent denied that portion of applicant's bills attributable to physical therapy treatment based on the fee schedule "8-unit rule."

Chapter 8 of the NYS Workers' Compensation Fee Schedule contains "Physical Medicine Ground Rules."

> Ground Rule 11 states:
>
> Multiple Physical Medicine Procedures and Modalities
>
> When multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to 8.0 units or the amount billed, whichever is less.
>
> The following codes represent the physical medicine procedures and modalities subject to this rule:

97010 97012 97014 97016 97018 97022 97024 97026 97028

97032 97033 97934 97035 97036 97039 97110 97112 97113

97116 97124 97139 97140 97950 97530 97535 97537 97542

97760 97761 97762

The applicable ground rule (Ground Rule 11, Chap. 8, Physical Medicine, NYS Workers' Compensation Fee Schedule) lists the CPT codes which are subject to the maximum reimbursement of 8.0 units for modalities/procedures performed on the same day.

To prove its "8 unit rule" defense respondent must submit proof that it paid another provider(s) for physical medicine modalities, billed under the codes listed above, performed on the same dates of service as those billed by applicant.

Respondent submitted its denials to applicant

However, respondent, although alleging that it paid a different provider (physical therapist), did not present any proof at arbitration that it had made any payments to any provider for the same dates of treatment for which it denied the above reimbursement to applicant.

Respondent did not submit any proof that it paid any other provider for physical medicine modalities performed on the same dates of service as those billed by applicant.

Accordingly based on the proof presented I find that respondent has not proven its fee schedule defense to applicant's claims for physical therapy treatment.

Medical necessity

On 8/14/18, Dr. John Iozzio performed a combined chiropractic/acupuncture IME on RA.

At this IME, RA complained of pain in his neck, midback, low back and left hip. RA had been in a prior MVA in 2017 and suffered from asthma.

Dr. Iozzio reviewed multiple medical records and performed a clinical exam, including range of motion testing and clinical tests. The results of this exam were entirely normal. Dr. Iozzio concluded that RA had resolved cervical, thoracic, and lumbar sprain/strain and resolved bi-lateral hip sprain/contusion, and no longer needed chiropractic care.

Applicant presented its follow up report of 9/2/18, conducted within approximately 2 weeks after the aforesaid IME.

At the follow up exam, it was found that RA had reduced range of motion with pain in the cervical and lumbar spine. There were multiple positive test results on clinical testing (cervical foraminal: Soto-Hall; shoulder depression; Bacody; cervical distraction; Valsalva; SLR; Kemp's; Elys heel-buttock; Adams; heel-toe walk; bi-lateral leg raise; Yeoman's).

Applicant, after examining RA on 9/2/18, opined that RA required further continued chiropractic care.

Applicant, as RA's treating chiropractor, was in a better position to evaluate RA's injuries, to judge whether the chiropractic treatment had improved RA's condition, and to determine if further chiropractic treatment would benefit RA.

The respondent bears the burden of production and the burden of persuasion with respect to the lack of medical necessity of the treatment or testing for which payment is sought. *Nir v. Allstate Insurance Company*, 7 Misc 3d 544, 796 NYS2d 857 (Civ. Ct. Kings Co. 2005); *Bajaj v. Progressive Insurance Company*, 14 Misc 3d 1202(A), 2006 WL 3627946 (Civ. Ct. Queens Co. 2006); *Elm Medical, P.C. v. American Home Assurance Company*, 2003 NY Slip Op. 51357(U) (Civ. Ct. Kings Co. 2003); *Expo Medical Supplies, Inc. v. Clarendon Insurance Company*, 12 Misc 3d 1154(A), 819 NYS2d 209 (Civ. Ct. Kings Co. 2006); *City Wide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Company*, 3 Misc 3d 608, 77 NYS2d 241 (Civ. Ct. Kings Co. 2004); *Fifth Avenue Pain Control Center v. Allstate Insurance Company*, 196 Misc 2d 801, 766 NYS2d 748 (Civ. Ct. Queens Co. 2003); *A.R. Medical Art, P.C. v. State Farm Mutual Automobile Insurance Company*, 11 Misc 3d 1057(A), 815 NYS2d 493 (Civ. Ct. Kings Co. 2006); *Hellander, M.D., P.C. v. State Farm Insurance Company*, 6 Misc 3d 579, 785 NYS2d 896 (Civ. Ct. Richmond Co. 2004); *A.B. Medical Services, P.L.L.C. v. New York Central Mutual Fire Insurance Company*, 7 Misc 3d 1018(A), 801 NYS2d 229 (Civ. Ct. Kings Co. 2005).

Respondent 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) (N.Y.C. Civ. Ct. 2006). The quantum of proof necessary to meet respondent's burden, at the bare minimum, is to "establish a factual basis and medical rationale for the lack of medical necessity of plaintiff's services."*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.

There is no legislative or regulatory standard for "medical necessity" in no fault disputes, and the "determination of the issue turns on credibility." *Behavioral Diagnostics v. Allstate Ins. Co.*, 3 Misc.3d 246, 776 N.Y.S.2d 178, 2004 N.Y. Misc. LEXIS 89 (Civil Ct, Kings Co. 2004).

In this case applicant has presented a follow up exam, which is contemporaneous to the chiropractic IME, and which refutes the IME clinical findings and rebuts the IME's conclusions.

Applicant's claim is granted in full.

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**
	Adagio Chiropractic P.C	**05/01/18 - 06/01/18**	**$172.28**	**Awarded: $172.28**
	Adagio Chiropractic P.C	**06/06/18 - 06/27/18**	**$369.92**	**Awarded: $369.92**
	Adagio Chiropractic P.C	**07/06/18 - 08/03/18**	**$323.68**	**Awarded: $323.68**

	Adagio Chiropractic P.C	**08/08/18 - 09/06/18**	**$277.44**	**Awarded: $277.44**
	Adagio Chiropractic P.C	**09/21/18 - 09/21/18**	**$72.65**	**Awarded: $72.65**
	Adagio Chiropractic P.C	**10/10/18 - 11/02/18**	**$231.20**	**Awarded: $231.20**
	Adagio Chiropractic P.C	**11/07/18 - 12/05/18**	**$184.96**	**Awarded: $184.96**
	Adagio Chiropractic P.C	**12/07/18 - 01/03/19**	**$198.84**	**Awarded: $198.84**
Total			**$1,830.97**	**Awarded: $1,830.97**

B. The insurer shall also compute and pay the applicant interest set forth below. 11/07/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

From 11/7/19 to 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

In cases filed before 2/4/15, the Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e)(effective April 5, 2002). For cases filed after 2/4/15, the respondent shall pay the Applicant an attorney's fee in accordance with newly promulgated 11 NYCRR 65-4.6 (d), as amended by the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-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 Westchester

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

12/02/2020
(Dated)

Elyse Balzer

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:
50de8d071db09811a53e2c06924a8f0b

Electronically Signed

Your name: Elyse Balzer
Signed on: 12/02/2020