

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Douglas Wright DC  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-19-1149-0030

Applicant's File No. FDNY19-37478

Insurer's Claim File No. 0489902816  
2CG

NAIC No. 29688

**ARBITRATION AWARD**

I, Charles Blattberg, 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

1. Hearing(s) held on 02/05/2021  
Declared closed by the arbitrator on 02/12/2021

Todd Fass, Esq. from Fass & D'Agostino, P.C. participated by telephone for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$ 345.30**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced the total amount in dispute to \$277.44 pursuant to fee schedule.

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

3. Summary of Issues in Dispute

The claimant was the 66 year-old female restrained driver of a motor vehicle that was involved in an accident on 1/24/18. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. Thereafter, the claimant was required to appear at an Independent Medical Examination ("IME") where Robert Snitkoff, D.C.

found further chiropractic treatment was not medically necessary. At issue is the medical necessity of 6/12/19-7/8/19 chiropractic services performed by Applicant after the IME cut-off.

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

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was the 66 year-old female restrained driver of a motor vehicle that was involved in an accident on 1/24/18. The claimant reportedly injured her neck, clavicle, and low back. There was no reported loss of consciousness. There were no reported lacerations, but there was a clavicle fracture. Following the accident the claimant was transported to Huntington Hospital where she was provided with a sling; and was evaluated, treated, and released. On 1/31/18 the claimant presented to Warwick Green, M.D. for an orthopedic consultation. Examination revealed "extensive ecchymosis on the superior aspect of the left shoulder extending to the root of the neck on the left side. There is a palpable step-off along the shaft of the clavicle which is tender to touch. There is no sensory deficit in the lateral aspect of the shoulder. No neurological deficits in the left upper extremity. Radial pulses are readily palpable." The treatment plan included sling immobilization and follow-up. On 3/28/18 the claimant presented to Douglas B. Wright, D.C. (Applicant) of Wright Chiropractic and Physical Therapy and was initiated on chiropractic treatment and physical therapy. On 4/11/18 Dr. Wright conducted computerized range of motion (ROM) testing. On 4/16/18 Dr. Wright conducted computerized comparative muscle strength testing (CCMT). As of 4/16/18 Dr. Green noted that the claimant had recovered full range of left shoulder movement and was cleared for physical therapy. On 5/8/18, on referral from Dr. Wright, Paul Priolo, D.C. conducted ligament laxity analysis/CRMA studies. The 5/14/18 cervical spine MRI ordered by Dr. Wright and interpreted by Linda Harkavy, M.D. produced an impression of straightening of the usual lordosis; multilevel disc degeneration, most severe at C4-5, C5-6 and C6-7 where there are disc herniations accompanied by osteophytic ridging. There is encroachment upon the cord at C5-C6 and bony narrowing of the neural foramina at each of these levels, more severe on the right at C4-5 and bilaterally at C5-6 and C6-7; and at C2-3 and C3-4 there are shallow posterior herniations with mild encroachment upon the subarachnoid space. The 5/14/18 lumbar spine MRI ordered by Dr. Wright and interpreted by Linda Harkavy, M.D. produced an impression of levoconvex rotatory curvature with slight retrolisthesis at L2-3 and L3-4; and stable multilevel disc degeneration, desiccated disc bulging favoring the right and

facet and ligament hypertrophy. There is canal stenosis at L2-3, L3-4 and L4-5 with marked narrowing of the left subarticular recess and encroachment upon the left L5 nerve root at L4-5. At L5-S1, there is mild encroachment upon the right S1 nerve root within the lateral recess. There is foraminal narrowing, more severe on the right at T12-L1, L1-2 and L2-3, bilaterally at L3-4 and L4-5. On 5/16/18 Dr. Wright conducted ROM testing. On 5/17/18 the claimant was required to present to Robert Snitoff, D.C. for an independent chiropractic examination (IME) that was purportedly negative and Respondent concluded "As per the findings of the physical examination conducted by ROBERT SNITKOFF DC on 5/17/18, all chiropractic, massage therapy and related claims benefits were determined to be not medically necessary and were denied effective 6/18/18." On 5/23/18 Dr. Wright conducted CCMT. On 6/14/18, on referral from Dr. Wright, the claimant presented to Scott A. Jones, D.O. of Branch Medical, P.C. for an examination preliminary to upper extremities and lower extremities EMG/NCV/F/H testing performed the same day that suggested evidence consistent with right C5 radiculopathy, bilateral axonal and demyelinating median neuropathy consistent with carpal tunnel syndrome, and bilateral S1 radiculopathy. The claimant presented with complaints of "neck pain, which radiates to the bilateral shoulders and down her right arm. She denies numbness and tingling in her upper extremities. She reports weakness in her shoulders and in the right arm. The patient also reports lower back pain, which radiates to the bilateral buttocks and down the posterior thighs to her knees, more prominent on the left. She reports a tingling sensation over the same distribution, more prominent in her lower extremities, left more than right. She denies weakness in her lower extremities." Examination of the cervical spine revealed muscle spasm along the bilateral cervical paraspinals and upper trapezium with associated tenderness to palpation, right more than left. Range of motion testing revealed flexion to 30/45°, extension to 30/55°, right rotation to 40/70°, left rotation to 60/70°, right lateral flexion to 10/40°, and left lateral flexion to 30/40°. The claimant reported pain in her neck on extension, right rotation, and bilateral side bending. Spurling's sign was positive bilaterally, more prominent on the right. Examination of the lumbar spine revealed muscle spasm along the bilateral lumbosacral paraspinals and gluteals with associated tenderness to palpation, left more than right. Range of motion testing revealed flexion to 40/90°, extension to 10/30°, right rotation to 20/30°, left rotation to 20/30°, right lateral flexion to 20/35°, and left lateral flexion to 20/35°. The claimant reported pain/discomfort on flexion (most), extension, and left side bending. Manual motor strength testing revealed 5/5 motor power throughout the bilateral upper and lower extremities; except for the bilateral deltoids and the left hip flexors, which were 4/5. Testing for deep tendon reflexes revealed 2+ responses throughout the bilateral upper and lower extremities; except at the left ankle, which was 1+. Sensation to light touch and pinprick was intact throughout the bilateral upper and lower extremities. Testing for Babinski and Hoffman's pathologic reflexes was negative. Muscle tone was within normal limits with no upper motor neuron signs noted. Proprioception and coordination were intact. Distal pulses were intact. On 6/25/18, on referral from Dr. Wright, the claimant presented to Mark J. Zuckerman, M.D. for a neurologic consultation with complaints of considerable radiating back pain and stiffness and radiating neck pain and stiffness with numbness and tingling in the first three fingers of right hand. Neurological examination revealed "there is no arm drift, interossei, finger flexion, extension, thumb abduction, wrist flexion, extension, elbow flexion, extension, biceps, triceps and strength are intact. Hip flexion, knee extension, dorsi and plantar flexion are normal.

Reflexes are normal 1-2+ in arms, and knees. Right ankle reflex is diminished. Knees and arms are 1-2+. She has decreased vibration in her feet, but preserved pin and touch and cold in the feet and hands with negative Romberg. No ataxia. Finger tapping, finger-to-nose and rapid movements are normal." Cervical examination revealed rotation on the neck to 55/80°, extension to 20°, flexion to 15°. Lateral flexion 30° to the left and 20° to the right. Lumbar flexion was limited to 40°, lateral flexion 10° on left and 15° to the right and 10° of extension. There was moderate spasm in the trapezii in the mid lower cervical paraspinal muscles and mid lumbar paraspinal muscles. Dr. Zuckerman's diagnostic impression was "sustained cervical sprain injury with persistent cervical pain and lumbar sprain with pain, disc herniation in the cervical spine with some superimposed on degenerative changes; and lumbar MRI report dated 05/14/2018 found ligament hypertrophy, lumbar stenosis at L4-L5 with marked foraminal stenosis and lateral recess stenosis." Dr. Zuckerman's treatment plan included "she will continue physical therapy and chiropractic. We discussed epidural injection for the low back given the degree of pain and radicular complaints in the left leg buttock. I am trying to obtain Huntington Hospital records. There is a question of a fracture of the clavicle. I would like to see the reports. She is also having shoulder issues in the right shoulder, and should be seen orthopedically." On 6/27/18 Dr. Wright conducted ROM testing. On 7/10/18 Dr. Wright conducted CCMT. On 7/11/18 the claimant presented to Felix Karafin, M.D. and trigger point injections were performed. On 7/26/18 Dr. Wright conducted ROM testing. On 9/17/18 Dr. Wright conducted CCMT. On 9/20/18 Dr. Wright conducted ROM testing. On 10/19/18 Dr. Wright conducted CCMT. On 11/14/18 the claimant presented to Brian Haftel, M.D. of Multi-Specialty Pain Management, P.C. with complaints of neck pain and Dr. Haftel performed cervical trigger point injections. On 11/16/18 Dr. Wright conducted ROM testing. On 12/4/18 Dr. Wright conducted CCMT. On 12/12/18 Dr. Haftel performed cervical trigger point injections. On 12/18/18 Dr. Wright conducted ROM testing. On 1/9/19 Dr. Haftel performed cervical trigger point injections. On 2/6/19 Dr. Wright conducted CCMT. On 2/8/19 Dr. Wright conducted ROM testing. On 3/4/19 Dr. Wright conducted CCMT. On 3/4/19 Aman Deep, M.D. performed Lumbar Paravertebral Nerve Block three levels and right sided under ultrasound guidance. On 3/18/19 Dr. Wright conducted ROM testing. On 3/18/19 Dr. Deep performed Lumbar Paravertebral Nerve Block three levels and right sided under ultrasound guidance. At issue are chiropractic services provided by Applicant 6/12/19-7/8/19.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op. 50219(U) (App. Term 2, 11th and 13th Jud. Dists. 20140). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op. 52116 (App. Term 1 Dept. 2006). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/peer doctor with his own facts. *Park Slope Medical and Surgical Supply, Inc. v. Travelers*, 37 Misc.3d 19 (2012).

An IME report asserting that no further treatment is not medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mutual Fire Ins. Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008).

Respondent timely denied the chiropractic services at issue based on the 5/17/18 independent chiropractic examination (IME) conducted by Robert Snitkoff, D.C. After reviewing the claimant's history, treatment, and medical records, Dr. Snitkoff conducts what appears to be a thorough examination. Dr. Snitkoff documents the claimant's then current complaints as pain in the neck that travels to her shoulders, lower back pain that radiates through the thigh, and pain in the left shoulder from the clavicle fracture that was still tender. Examination of the cervical spine revealed **minimal to moderate tenderness** on palpation; there was no muscle spasm on palpation. Range of motion of the cervical spine revealed flexion to **45/50°**; extension to **55/60°**; lateral bending to **40/45°** bilaterally; and rotation to **70/80°** bilaterally. Negative orthopedic tests were Soto Hall test, Foraminal Compression, Jackson's Compression, and Cervical Distraction. Examination of the thoracic spine revealed no evidence of palpable muscle spasm or tenderness. Examination of the lumbar spine revealed **minimal tenderness** on palpation; there was no muscle spasm on palpation. Range of motion of the lumbar spine revealed flexion to **50/60°**; extension to **20/25°**; lateral bending to **20/25°** bilaterally; and rotation to **30/30°** bilaterally. Minor's sign was absent. The claimant was able to walk well on both heels and toes and in tandem. Negative orthopedic tests were Ely's, Fabere-Patrick, Nachlas, Straight leg raising, and Kemp's. Deep tendon reflexes in the bilateral upper and lower extremities were 2+, equal and symmetrical. Muscle testing of the upper and lower extremities was 5/5 bilaterally. Sensation was normal. Dr. Snitkoff's diagnosis was cervical and lumbar spine sprains/strains resolved. Dr. Snitkoff concluded "decreased range of motion exhibited on exam is secondary to the claimant's age. Based on my examination, there is no need for further chiropractic treatment. There is no need for diagnostic testing. The claimant does not require household help, special transportation or durable medical equipment. There is no need for massage therapy."

Where the Defendant insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Plaintiff which must then present its own evidence of medical necessity (see Prince on Evidence section 3-104, 3-202). *West Tremont Medical Diagnostic PC v. Geico*, 13 Misc.3d 131, 824 N.Y.S. 2d 759.

It is noted that Applicant submitted an 8/13/19 peer rebuttal by Nestor A. Nicolaides, D.C. that addressed the medical necessity of a "Motion X Mechanical Lumbar Support." Applicant did not submit any chiropractic treatment notes or reports of any chiropractic reexamination/reevaluations after the initial examination of 3/28/18; beyond the multiple testing reports referenced above.

In AAA Case No.: 17-19-1129-4333 this arbitrator was presented with the same eligible injured person, the same Respondent, the same 5/17/18 independent chiropractic examination (IME) conducted by Robert Snitoff, D.C., the same lack of IME

contemporaneous or subsequent chiropractic treatment notes/examination reports from Applicant, and the same issue of post IME treatment. There this Arbitrator was compelled to find:

*"Following a complete review of the evidence presented here, I find Dr. Snitkoff's IME report more persuasive than Applicant's evidence on the issue of medical necessity for the chiropractic treatment at issue in this arbitration. I find that Respondent proved lack of medical necessity for the subject services by a preponderance of the credible evidence. Applicant failed to meet its evidentiary burden. The submitted reports do not sufficiently rebut Dr. Snitkoff's negative examination or demonstrate a continuing injury requiring further chiropractic treatment. I sustain the defense asserted in the denials."*

This Arbitrator came to substantially the same conclusion in AAA Case No.: 17-19-1140-5802, AAA Case No.: 17-18-1107-9305, AAA Case No.: 17-19-1124-5536, and AAA Case No.: 17-19-1121-1047. Applicant here has submitted no new evidence that would rationally permit this Arbitrator to arrive at a contrary conclusion. Accordingly, the claim is denied in its entirety.

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 Nassau

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

03/08/2021  
(Dated)

Charles Blattberg

### **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:**  
cb45917552a5071d03f6931f4bad7f29

### **Electronically Signed**

Your name: Charles Blattberg  
Signed on: 03/08/2021