

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Williamsburg Chiropractic PC  
(Applicant)

- and -

MAPFRE Insurance Company of New York  
(Respondent)

AAA Case No. 17-20-1164-8048

Applicant's File No. 803458

Insurer's Claim File No. 0004030761

NAIC No. 25275

**ARBITRATION AWARD**

I, Matthew Brew, 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 party or IP

1. Hearing(s) held on 12/07/2020, 03/22/2021  
Declared closed by the arbitrator on 03/22/2021

Steven Slotnick, Esq. from Slotnick & Ashkenazy, LLP participated by telephone for the Applicant

Stamatis Michelakos, Esq. from Law Office Of Leigh J. Katz & Associates participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,966.08**, was AMENDED and permitted by the arbitrator at the oral hearing.

**\$3353.83 as stipulated by the parties.**

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

**The parties stipulated to amend the disputed amount to \$3,353.93.**

**The parties also stipulated that should Applicant prevail interest would accrue from the filing date of May 11, 2020.**

### 3. Summary of Issues in Dispute

**Whether Respondent established and sustained its lack of medical necessity defense in regard to post IME treatments rendered between September 6, 2017 and April 30, 2018? Reimbursement was denied based upon the results of a chiropractic independent medical examination (IME) performed by Dr. Neil M. Ganz, DC on August 16, 2017.**

**Whether Respondent established and sustained its lack of medical necessity defenses in regard to the upper and lower EMG/NCV testing performed on April 25 and June 6, 2017? Reimbursement in response to these billings was denied based upon peer reviews by Dr. Bonnie Corey and Dr. Neil Ganz.**

**Whether Applicant established prima facie entitlement to reimbursement in regard to the bill for services rendered between January 9 and January 18, 2018? Respondent denied receipt of this claim.**

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

Upon comparing all the relevant evidence submitted by the parties as contained in the electronic file maintained by the American Arbitration Association, and in consideration of the oral arguments presented by each party, **I find in favor of Applicant in the amount of \$3,269.69.**

Applicant's assignor, hereinafter referred to as the Injured Party or "IP", is described as a then 54-yr-old male driver of a motor vehicle involved in an accident on May 21, 2017. He did not immediately seek medical attention.

However, subsequent to the loss the IP did seek treatment in regard to claimed injuries to his neck, upper back, shoulder and lumbar spine. Such treatment included chiropractic and electrodiagnostic testing.

In this case, Applicant was initially seeking reimbursement in the amount of \$3966.08 in regard to various treatments rendered between April 4, 2017 and April 30, 2018. However, during argument the parties stipulated to amend that amount to \$3,352.83. Applicant withdrew the claims to which the policy deductible was applied. Applicant also withdrew those claims where verification had been requested. Remaining in dispute are the 27 visits between September 6, 2017 and April 30, 2018 (post-IME totaling \$1,135.89), 2 office visits totaling \$84.14 of which Respondent denied receiving a bill for, upper EMG/NCV amended to \$1,057.65 and lower EMG/NCV amended to \$1,076.65. Reimbursement in regard to the remaining claims was denied based Respondent's determination that the treatments were not medically necessary (except for the two claims which Respondent denies receiving).

**Bill Never Received**

It is well settled that an Applicant establishes its prima facie showing of entitlement to No-Fault benefits under Article 51 of the Insurance Law by "submitting evidence that payment of no-fault benefits is overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 14 N.Y.S. 3d 283 ( 2015). A facially valid claim is presented when it sets forth the name of the patient, accident date, service date(s), description of the services rendered, and the amounts billed for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1 Dist. Ct. Nass. Co.1996).

In this case, Respondent denies receiving Applicant's bills for office visits on January 9 and January 18, 2018. The bill is dated January 23, 2018 and sought reimbursement in the amount of \$84.14.

Applicant submitted what it claims is proof of mailing indicating that the claim was in fact mailed by Applicant's counsel on February 5, 2020. However, the document relied upon by Applicant does not indicate what was mailed, in what amount, or for what date(s) of service.

Further, Respondent relies on the affidavit of Travis Miller, who avers that Respondent has no record of receiving the claim, purportedly mailed almost two years after the services were rendered.

After reviewing the competing evidence, I found Applicant failed to establish, prima facie, its entitlement to reimbursement in regard to the services rendered between January 9 and January 18, 2018.

***Reimbursement in regard to this claim is therefore denied.***

#### **IME- Cut Off**

However, I do find that Applicant established its prima facie case in regard to the remaining bills.

Once an Applicant establishes its prima facie case, the burden shifts to Respondent who must then come forward with evidence sufficient to rebut the presumption of medical necessity that attached to Applicant's bills. West Tremont Med. Diagnostic, PC v. Geico Ins. Co., 13 Misc.3d 131(A) (N.Y. App. Term 2006). When a Respondent carrier establishes a defense based on a lack of medical necessity, the burden shifts back to the provider who then must then come forward with its own evidence of medical necessity. Id. However, if the lack of medical necessity defense is premised upon the results of an independent medical examination (IME), the conclusions of the doctor must be supported by a sufficiently detailed factual basis and medical rationale. Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table); Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table). The failure to provide such support will result in the

report having little to no probative value. When a Respondent carrier establishes a defense based on a lack of medical necessity, the burden shifts back to the provider who then must refute the findings of the IME doctor and come forward with its own evidence of medical necessity. West Tremont Med. Diagnostic, PC v. Geico Ins. Co., 13 Misc.3d 131(A) (N.Y. App. Term 2006).

In support of its lack of medical necessity defense in regard to the 27 post IME-treatments at issue, Respondent relied upon the results of a chiropractic IME performed by Dr. Neil M. Ganz, DC on August 16, 2017. Subsequent to that exam, Respondent issued a global denial on September 1, 2017 effectively terminating further chiropractic treatments as of September 6, 2017.

During the IME, Dr. Ganz documented the IP's subject complaints of back pain as being "6 on a scale of 1-10 with ten being the most severe". The pain emanated from his neck, mid/lower back and hips. However, objectively, the examination was mostly normal and the IP was diagnosed as resolved cervical, thoracic, and lumbar sprain/strain. Dr. Ganz opined that there was no evidence of any chiropractic disability and no further treatment was recommended.

I found Dr. Ganz's report sufficient in terms of establishing, prima facie, Respondent's defense of lack of medical necessity in regard to the subject bills. It appears the doctor performed a thorough examination which was mostly unremarkable. Further, his ultimate conclusion was supported by "a sufficiently detailed factual basis and medical rationale". Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table). The burden therefore shifted to Applicant to refute the IME findings and establish through its own evidence the medical need for the disputed treatment.

In support of its case, Applicant did not submit a formal rebuttal to Dr. Ganz's IME. Rather, Applicant relied upon the submitted records and the arguments of counsel.

During argument, Applicant's counsel referenced several contemporaneous reports and records contained in both Applicant's and Respondent's collective submissions. Counsel further argued that the IME was insufficient because Dr. Ganz did not review the cervical or lumbar MRIs, nor did he reference the EMG/NCV findings. Counsel also took issue with the lack of discussion in regard to Dr. Hoffman's "findings of exacerbation and flare ups". Reference was specifically made to the November 7, 2017 follow up exam.

Upon carefully reviewing the submitted records, and in contemplation of the arguments made during the hearing, I found Applicant's evidence and arguments more persuasive in regard to the issue of medical necessity as it pertained to the post-IME treatments. In my opinion, Applicant sufficiently rebutted Respondent's prima facie showing, and demonstrated a need for continued treatments beyond the IME cutoff date.

***Applicant is therefore awarded \$1135.89 in regard to the 27 visits between September 6, 2017 and April 30, 2018.***

## **Peer Reviews**

Applicant's bill for a lower extremity EMG/NCV test performed on April 25, 2017 (\$1,076.15) was received on May 8 and denied on May 31, 2017 based on a peer review by Dr. Bonnie Corey, DC dated May 30, 2017. Dr. Corey also provided an addendum dated September 15, 2020.

After reviewing applicable records and providing a history of the IP's condition and treatment, Dr. Corey provided in part that the submitted records failed to substantiate the need for the testing. She further maintained that "the recommended course of conservative chiropractic treatment is quite sufficient to treat this claimant's soft tissue injuries". Dr. Corey also maintained that "this test was not needed to make a diagnosis of nerve root compression or radiculopathy or radiculitis, which can be made clinically".

Dr. Corey's peer continued by providing that "the claimant presented with typical acute soft tissue musculoskeletal findings. In the event that a radiculopathy was suspected, there was no clinical presentation of another neurological condition accounting for this symptomology". The doctor also argued that "there was no indication from the records that the claimant's condition was worsening or not responding to the recommended treatment and that current chiropractic treatment plan was dependent on the results of the EMG/NCV testing. There was no indication this claimant was a surgical candidate and this was dependent on the results of the EMG/NCV.

I found the peer review sufficient in terms of establishing, *prima facie*, Respondent's lack of medical necessity defense in regard to the lower extremity testing. Dr. Corey's ultimate determination was supported by a "sufficiently detailed factual basis and medical rationale". Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table); Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table). Further, her report provided specifics of the claim, referenced pertinent authority and did not appear conclusory.

Having established *prima facie* that the treatment was not medically necessary, the burden shifted to the Applicant to rebut the peer doctor's conclusions and to establish by a preponderance of the evidence the medical necessity for the disputed treatment. West Tremont Med. Diagnostic, PC v. Geico Ins. Co., 13 Misc.3d 131(A) (N.Y. App. Term 2006).

In support of its claim, Applicant submitted a formal rebuttals from Dr. Jared Hoffman dated August 14, 2017 and July 14, 2020. Applicant also relied upon the submitted records and the arguments of counsel.

In his rebuttals, Dr. Hoffman also provided a history of the IP's condition and treatment. In pertinent part, Dr. Hoffman discussed the findings during the initial exam and more importantly, the MRI findings as they pertained to the lumbar spine. That MRI revealed "left paracentral disc herniation T12/L1 and L1/2 with deformity of the thecal sac and

both levels, right paracentral disc herniation at L2/3 and central disc herniation at L3/4 and central disc herniation at L4/5 superimposed upon more diffuse bulging as well as broad based disc herniation at L5/S1 with more diffuse disc bulging causing encroachment on bilateral neural foramina".

Dr. Hoffman continued by providing that:

*After completion of conservative treatment for several weeks, the patient continued to experience persistent symptoms of pain.*

***With a lack of satisfactory improvement an electrodiagnostic study was performed on April 25, 2017, to define the patient's diagnosis more precisely and to alter the treatment plan and make proper referrals for care. Results revealed bilateral L5-S1 radiculopathies.***

Dr. Hoffman then cited to authority beyond the ODG Guidelines relied upon by Dr. Corey (which Applicant's counsel argued were insufficient as same are not applicable to no fault treatments".

I note that Dr. Corey did submit an addendum, which relied upon other authority other than the ODG. However, the denial was base upon the peer review, and not the addendum.

Clearly, this case involved conflicting expert opinions as to the need for the lower EMG/NCV testing at issue in this case. Upon carefully reviewing the pertinent evidence submitted by both sides, and in contemplation of the arguments presented by the parties during the hearing, I found Respondent established, prima facie, its lack of medical necessity defense. Thus, the burden shifted to Applicant rebut Respondent's defense, and to establish by a preponderance of the evidence the medical need for the disputed treatment.

In this case, I found Applicant satisfied its burden in regard to the lower EMG/NCV testing at issue. Ultimately, I found Applicant's evidence and arguments more persuasive on the issue of medical necessity.

***Applicant is therefore awarded \$1,076.15 in regard to the lower EMG/NCV testing performed on April 25, 2017.***

The June 6, 2017 billing for the upper extremity EMG/NCV testing (\$1,057.65) was received on June 26 and denied on July 20, 2017 based on a peer review by Dr. Neil M. Ganz, DC dated July 13, 2017. Dr. Ganz also provided an addendum dated July 24, 2020.

After reviewing applicable records and providing a history of the IP's condition and treatment, Dr. Ganz determined that the upper nerve testing was not medically necessary. Initially, Dr. Ganz provided a brief discussion of the EMG/NCV test, and how same interacts with chiropractic treatment. In citing to various authority, Dr. Ganz

outlined the criteria for when such testing may be applicable. He then discussed how the IP in this case did not qualify for such testing.

In opposition, Applicant again relied upon different rebuttals from Dr. Hoffman as well as the arguments of counsel. In these rebuttals, Dr. Hoffman also provided a history of the IP's condition and treatment, discussed Dr. Ganz's peer, and outlined the reasons he disagreed with the peer doctor's conclusions. He further articulated the reasons why the upper extremity testing was performed in this case.

Reference is made to Dr. Hoffman's rebuttals, which I found to be persuasive.

I also note that in response to Applicant's rebuttals, Respondent submitted an addendum from Dr. Ganz.

Clearly, this case involved conflicting expert opinions as to the need for the upper EMG/NCV testing at issue in this case. Upon carefully reviewing the pertinent evidence submitted by both sides, and in contemplation of the arguments presented by the parties during the hearing, I found Respondent established, prima facie, its lack of medical necessity defense. Thus, the burden shifted to Applicant rebut Respondent's showing, and to establish by a preponderance of the evidence the medical need for the disputed treatment.

In this case, I found Applicant satisfied its burden in regard to the upper EMG/NCV testing at issue. Ultimately, I found Applicant's evidence and arguments more persuasive on the issue of medical necessity.

***Applicant is therefore awarded \$1057.65 in regard to the upper EMG/NCV testing performed on June 6, 2017.***

### **Conclusion**

**Therefore, based on the foregoing, I find in favor of Applicant in the amount of \$3,269.69.**

This decision is in full disposition of all claims for No-Fault benefits submitted before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of hearing.

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
	<b>Williamsburg Chiropractic PC</b>	<b>04/04/17 - 04/30/18</b>	<b>\$3,966.08</b>	<b>\$3,353.83</b>	<b>Awarded: \$3,269.69</b>
<b>Total</b>			<b>\$3,966.08</b>		<b>Awarded: \$3,269.69</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/11/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

May 11, 2020 is the date that the arbitration is deemed to have been commenced and the date that the parties stipulated interest would accrue from should Applicant prevail.

INTEREST: Pursuant to Insurance Law § 5106 (a), interest accrues on overdue no-fault insurance claims at a rate of 2% per month. A claim is overdue when it is not paid within 30 days after a proper demand is made for its payment (Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]). The Superintendent's regulation tolls the accumulation of interest if the claimant "does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9 [c]). The Superintendent has interpreted this provision to mandate that the accrual of interest is tolled, regardless of whether the particular denial at issue was timely. That interpretation was upheld by the Court of Appeals in LMK Psychological Servs, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (April 2, 2009). Where no denial of claim is issued in response



to a proper demand for payment, the insurer does not benefit from the tolling provision and interest will accrue from the date 30 days after the proper demand for payment is made. Interest that accrues when a denial of claim is not issued within 30 days after the proper demand for payment is made will be tolled upon the issuance of a denial of claim, although such denial is untimely, and the failure to request arbitration or institute a lawsuit within 30 days after receipt of that denial of claim form.

C. Attorney's Fees

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

For cases filed after February 4, 2015, the attorney's fee is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4. The attorney's fee shall be limited as follows: 20% of the total amount of first-party benefits and any addition first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360. If the nature of the dispute results in an attorney's fee that could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable.

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

03/31/2021  
(Dated)

Matthew Brew

**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:**  
3a7f1147ff08161a7339f022b71467b0

### **Electronically Signed**

Your name: Matthew Brew  
Signed on: 03/31/2021