

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hillside Chiropractic PC f/k/a Hillside
Chiropractic Associates P.C
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-20-1174-8731
Applicant's File No.	24513-B
Insurer's Claim File No.	0104577900101173
NAIC No.	22063

ARBITRATION AWARD

I, Kenneth Rybacki, 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 04/05/2021
Declared closed by the arbitrator on 04/05/2021

Aaron Meyer, Esq. from Gottlieb Ostrager LLP participated for the Applicant

Daniel Lissauer, Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,808.96**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

Counsel for the parties stipulated that Respondent's NF-10 Denial of Claim forms were issued within thirty-day claim-determination periods prescribed by Ins. L. Sec. 5106 and/or 11 N.Y.C.R.R 65-3.8 and that Applicant's reduced claims comported with applicable fee schedules.

3. Summary of Issues in Dispute

The medical necessity of continuing chiropractic treatment for injuries sustained in a 10/25/15 accident by the Assignor, A.W., a then fifty-one-year-old male, following a physical examination by the Respondent's examining chiropractic expert, Christopher

Ferrante, D.C. on 3/15/16. Applicant's claims for chiropractic treatment provided during the period, 3/20/17 through 2/9/18 were denied based on the results of the examination.

4. Findings, Conclusions, and Basis Therefor

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions following the close of the record on 9/14/20 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."

This action for the payment of health services claims for chiropractic treatment provided during the period, 3/20/17 through 2/9/18, arises from a motor vehicle accident that occurred on 10/25/15. Respondent denied the claims based on the recommendation of its examining expert, Christopher Ferrante, D.C. I am therefore presented with a question of fact as to whether continuing treatment of the Assignor was necessary following that examination that took place on 3/15/16.

It is well-settled that submission of a provider's claim form to the carrier is prima facie evidence of the necessity of the services contained therein, Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498; Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A), 784 N.Y.S.2d 918. An insurer's prima facie case rebutting the presumption of necessity attaching to a claim form is demonstrated through the submission of the insurer's expert's report setting forth a factual basis and medical rationale for the conclusion that its insured's injuries were resolved as of the date of the expert's physical examination, see, e.g., Utica Acupuncture, P.C. v. Interboro Ins. Co., 39 Misc.3d 139(A).

Respondent's expert noted that the Assignor had not worked since the subject accident although the Assignor's occupation is not indicated. The expert performed a quantitative assessment of the ranges of motion of the Assignor's cervical and thoracolumbar spines. All planes tested were noted to be within normal limits. Provocative orthopedic testing was documented as negative. Reflex, motor strength and sensory examinations of the bilateral upper extremities and bilateral lower extremities were normal. The expert opined that the Assignor had sustained cervical and thoracolumbar injuries that had resolved as of the date of the examination and therefore, further treatment was unnecessary.

Once an insurer meets its prima facie burden, it is incumbent upon the applicant to rebut the showing of non-necessity through applicant's own evidence demonstrating medical necessity, e.g., West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A).

It appears that Applicant commenced treatment of the Assignor on 10/26/15. That treatment continued with regularity through the period in dispute. Applicant re-examined the Assignor on 2/29/16. That examination documented positive Kemp's, Jackson's and Soto Hall's tests, vertebral fixation at specific cervical, thoracic, and lumbar levels, and diminished deep tendon reflexes. That examination also documented quantified restrictions in various planes of cervical and lumbar motion. Progress notes from the date of that re-examination through to the date of the Respondent's examination document intermittent myospasms. A 4/22/16 re-examination documents positive provocative orthopedic maneuvers and vertebral fixations at specified levels as well as continuing restrictions in cervical and thoracolumbar motion. Restrictions in various planes of cervical and lumbar motion are quantified, and positive provocative orthopedic maneuvers are documented in a 1/13/17 examination, Applicant indicates that the Assignor's progress was affected by multiple levels of cervical and lumbar spinal fixation, confirmed radiculopathy, disc herniation and shoulder derangement.

I find from the proffered evidence that the Applicant rebutted the showing made by Respondent's expert and maintained its continuing burden of persuasion on the need for continuing chiropractic intervention. Applicant documented continuing sequelae from the Assignor's cervical and thoracolumbar injuries in examinations proximate to that conducted by the Respondent's expert.

Applicant is awarded \$2,808.96.

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
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	03/20/17 - 03/20/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	03/31/17 - 03/31/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	04/03/17 - 04/07/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	04/10/17 - 04/10/17	\$63.52	Awarded: \$63.52
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	04/17/17 - 04/17/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic			

	PC f/k/a Hillside Chiropractic Associates P.C	04/24/17 - 04/28/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	05/01/17 - 05/03/17	\$138.72	Awarded: \$138.72
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	05/10/17 - 05/19/17	\$138.72	Awarded: \$138.72
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	05/22/17 - 05/24/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	05/31/17 - 06/02/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	06/05/17 - 06/07/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	06/14/17 - 06/16/17	\$92.48	Awarded: \$92.48
	Hillside			

	Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	06/19/17 - 06/21/17	\$109.76	Awarded: \$109.76
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	06/26/17 - 06/28/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	06/30/17 - 07/07/17	\$138.72	Awarded: \$138.72
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	07/10/17 - 07/12/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	07/19/17 - 07/19/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	07/26/17 - 07/26/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	08/02/17 - 08/02/17	\$46.24	Awarded: \$46.24

	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	08/09/17 - 08/09/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	08/16/17 - 08/16/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	08/30/17 - 09/06/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	09/11/17 - 09/11/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	09/18/17 - 09/20/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	09/27/17 - 09/27/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	10/02/17 - 10/02/17	\$46.24	Awarded: \$46.24

	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	10/25/17 - 10/25/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	11/08/17 - 11/08/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	11/22/17 - 11/22/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	12/06/17 - 12/06/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	12/13/17 - 12/13/17	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	12/18/17 - 12/20/17	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a	12/27/17 - 12/27/17	\$46.24	Awarded: \$46.24

	Hillside Chiropractic Associates P.C			
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	01/03/18 - 01/10/18	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	01/17/18 - 01/17/18	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	01/22/18 - 01/22/18	\$46.24	Awarded: \$46.24
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	01/29/18 - 01/31/18	\$92.48	Awarded: \$92.48
	Hillside Chiropractic PC f/k/a Hillside Chiropractic Associates P.C	02/05/18 - 02/09/18	\$138.72	Awarded: \$138.72
Total			\$2,808.96	Awarded: \$2,808.96

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/11/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 8/11/20 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with the limitations set forth in 11 NYCRR 65-4.6.

- 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 Suffolk

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

04/11/2021

(Dated)

Kenneth Rybacki

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:
718e7113512d6896807428a9ab7a3b92

Electronically Signed

Your name: Kenneth Rybacki
Signed on: 04/11/2021