

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

John Ward DC d/b/a Walden-Bailey
Chiropractic Center
(Applicant)

- and -

AAA Case No. 17-21-1198-5162
Applicant's File No. 21-25977
Insurer's Claim File No. 0491387452 2EZ
NAIC No. 29688

Allstate Fire & Casualty Insurance Company
(Respondent)

ARBITRATION AWARD

I, Douglas Coppola, 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 09/16/2021
Declared closed by the arbitrator on 09/16/2021

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated for the Applicant

Kevin Davis, Esq. from Law Offices of John Trop participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 223.20**, 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

Was continued chiropractic care rendered by the Applicant from August 12, 2019 - November 2, 2019 reasonable and necessary although denied by the Respondent carrier's IME by Craig Horner, DC dated August 16, 2018?

This hearing was conducted using the ADR Center maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the ADR Center as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the ADR Center as of the date of this award will be listed immediately below and forwarded to

the American Arbitration Association at the time of this award is issued for inclusion in said case folder.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations.

This claim arises out of a MVA which occurred on February 8, 2018 in which the assignor (EIP) sustained neck and back injuries necessitating chiropractic care with the Applicant.

According to the file, the Respondent carrier arranged for an IME with Craig Horner, DC on August 16, 2018. At the IME, the EIP had continued complaints of pain in her neck, low and mid back, right shoulder, right hip, left hip, left shoulder, both knees, and right ankle. During the IME, Dr. Horner found severe tenderness to superficial light touch with no spasms or disturbed alignment due to the injuries. Motor strength was normal. Range of motion was significantly reduced in the cervical spine with no motion allowed for lumbar extension.

The thoracic spine exam revealed severe tenderness to superficial light touch. The lumbar spine exam revealed tenderness to light touch. Range of motion in the lumbar spine were significantly reduced. Dr. Horner states there were suboptimal effort during the examination and opined that the EIP had resolved cervical, thoracic and lumbar strains. There was no positive objective findings at the IME. There was evidence of symptom magnification and poor effort by the EIP.

At a prior arbitration in AAA linked case number 17-19-1139-8615, Arbitrator Lutzen considered the claim of the Applicant for treatment from September 28, 2018 - August 9, 2019. He reviewed all of the medical records and concluded that the records of the Applicant do not support any continued neck or back pain. He found that the Applicant failed to meaningfully refer to let alone rebut the primacy conclusions set forth by Dr. Horner. He denied the continued care based upon the IME up to the date of service on August 9, 2019.

This case concerns continued chiropractic care from August 12, 2019 - November 2, 2019. This was also denied based upon the IME of Craig Horner, DC held sufficient by Arbitrator Lutzen. The same report bears the date of August 16, 2019 in this case.

I too conclude that the subsequent records of this Applicant do not re-establish medical necessity for the ongoing care. I find as Arbitrator Lutzen did that Horner conclusion at the IME is well reasoned and credible. Applicant's evidence failed to meaningfully refer

to let alone rebut the primary points and conclusion as set forth by Dr. Horner. Consequently, I sustain the denial issued by Respondent carrier in this case based upon the Horner IME of August 16, 2019.

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 Erie

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

09/29/2021
(Dated)

Douglas Coppola

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:
ea1b350e36eb9a340e4af00f0c213e96

Electronically Signed

Your name: Douglas Coppola
Signed on: 09/29/2021