

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

MZY Acupuncture PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-20-1166-8383

Applicant's File No. 3097935

Insurer's Claim File No. 1057339-01

NAIC No. 16616

ARBITRATION AWARD

I, Robyn McAllister, 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 10/07/2021
Declared closed by the arbitrator on 10/07/2021

Elvira Messina, Esq. from Law Offices of Andrew J. Costella Jr., Esq. participated for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,926.62**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced its claim to comply with Respondent's coder affidavit. The new amount claimed is \$1804.77.

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

3. Summary of Issues in Dispute

Whether Respondent properly denied Applicant's claim for performing acupuncture and cupping treatments for Assignor (JF), a 27 year-old female passenger, in connection with treatment of injuries sustained in a motor vehicle accident on April 24, 2019, based on an Independent Medical Examination by David Manevitz, D.O.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1804.77 for performing acupuncture and cupping treatments from October 1, 2019 to November 21, 2019 for Assignor (JF), a 27 year-old female passenger, in connection with treatment of injuries sustained in a motor vehicle accident on April 24, 2019. Respondent timely denied Applicant's claim predicated on an Independent Medical Examination ("IME") on August 21, 2019 by David Manevitz, D.O.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denials acknowledged timely receipt of Applicant's bills. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the services rendered were not medically necessary. I disagree. I was not persuaded by the IME report by Dr. Manevitz, submitted by Respondent in support of its denials.

Dr. Manevitz examined Assignor on August 21, 2019. According to Dr. Manevitz, Assignor was employed in "dietary" in a hospital and missed " a few days of work" and was working on "light duties" at the time of the IME. Dr. Manevitz noted that Assignor made subjective complaints of pain in the head, lower back and left knee and that she had taken ibuprofen and used a pain cream for her knee on that day.

Dr. Manevitz's examination revealed tenderness of the left knee with decreased range of motion on flexion, which he characterized as "self-limited." Dr. Manevitz concluded that Assignor had sustained "sprain" of the cervical and lumbar spine, which had "resolved," and "left knee sprain-resolving." Dr. Manevitz also performed an acupuncture examination and noted that "deficiencies in qi or yin apparent in kidney." He concluded that Assignor had sustained "stagnation of Chi on the bladder channel resolved; and KI channel resolving."

Dr. Manevitz opined that Assignor needed on further physical therapy or acupuncture and stated "it is my opinion that continued physical therapy and acupuncture treatment

will not benefit the claimant. The claimant should be referred to a more appropriate specialist for future treatment options." Based on the IME findings, Respondent terminated Assignor's benefits effective September 9, 2019.

It was Respondent's burden to demonstrate lack of medical necessity. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006). I find that Respondent failed to satisfy its burden.

Dr. Manevitz clearly noted that Assignor's injury to the left knee had not resolved and his conclusory statement that further physical therapy and acupuncture would not benefit the claimant without any further explanation was insufficient to support Respondent's defense.

Furthermore, even if Dr. Manevitz's IME report was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Manevitz's assertions. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006).

Applicant submitted the documents examination reports and rebuttal to the IME dated August 10, 2021 by Ming Zhi Yang, L.Ac. The initial acupuncture exam on October 1, 2019, approximately five weeks after the IME, continued to note both subjective and objective signs of injury to the neck, back and left knee. Specifically, the report noted tenderness, tension and trigger points in the neck and back and that the left knee was affected along with a pale tongue and slippery pulse. The acupuncturist diagnosed "Qi/Blood Flow Obstructed syndrome and Localized Qi-Blood stasis and stagnation." and recommended acupuncture and cupping treatments to address Assignor's symptoms. Mr. Yang's rebuttal to the IME asserted that contrary to Dr. Manevitz's assertion Assignor's injuries had not resolved and that acupuncture and cupping were beneficial to Assignor.

Moreover, the treating provider's opinion should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the services rendered.

Accordingly, Applicant is awarded \$1804.77, the entirety of its amended claim.

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
	MZY Acupuncture PC	10/01/19 - 11/21/19	\$2,926.62	\$1,804.77	Awarded: \$1,804.77
Total			\$2,926.62		Awarded: \$1,804.77

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/29/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from May 29, 2020, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, ending with the 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

The insurer shall pay an attorney's fee of 20% of the claim awarded above plus interest in accordance with 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 Westchester

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

10/09/2021
(Dated)

Robyn McAllister

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:
1a1dd391a9c4278610462740c77fa25f

Electronically Signed

Your name: Robyn McAllister
Signed on: 10/09/2021