

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

River Park Acupuncture PC (Applicant)	AAA Case No.	17-22-1254-1415
- and -	Applicant's File No.	n/a
	Insurer's Claim File No.	0450033006 2DN
Allstate Property and Casualty Insurance Company (Respondent)	NAIC No.	17230

ARBITRATION AWARD

I, Nancy Kramer Avalone, 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: EIP/Su or EIP

1. Hearing(s) held on 05/24/2023
Declared closed by the arbitrator on 05/24/2023

Mark Fenelon, Esq., Of Counsel from Law Offices of Hillary Blumenthal LLC
(Hoboken) participated virtually for the Applicant

Thomas Cooke, Esq. from Law Offices of John Trop participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$1,162.09**, 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

The Applicant is seeking further reimbursement for acupuncture treatment provided to EIP/Su from 04/20/2017 through 04/18/2017. The Applicant billed at the rate proscribed for services provided by a medical doctor. Respondent reimbursed the acupuncture treatment at the acupuncturist rate, and not the rate for medical doctors. The balances were denied based on the fee schedule.

The Respondent denied all claims for services provided after 7/17/2017 based on the Independent Medical Examination ("IME") by Alan Handelsman, L.Ac. Thus, dates of

service 7/26/2017 through 8/7/2017 were denied as not medically necessary based on the IME report. The Applicant submitted a rebuttal by Leonid Shapiro, MD.

The EIP was a 70-year old male driver involved in a motor vehicle accident on 3/17/2017. He was transported to Nyack Hospital via ambulance from the accident scene. At the hospital, he was evaluated, treated and discharged with oral medication.

The issues to be determined are whether the post-IME services were medically necessary and the proper reimbursement for the acupuncture.

There were no issues raised with respect to the submission of the claims or issuance of the denial of claim forms. After reviewing the Record, I find that Applicant established its *prima facie* case of entitlement to No-Fault compensation, and Respondent issued timely denial of claim forms preserving all defenses contained therein.

4. Findings, Conclusions, and Basis Therefor

The instant matter was decided based upon the submissions of the parties as contained in the electronic file ("E-file") maintained by the American Arbitration Association (MODRIA), and the oral arguments of the parties' representatives. The hearing was held via a web-based video conferencing platform (ZOOM). I have reviewed the documents contained in the E-file, heard the arguments of the parties, and make my decision in reliance thereon.

Pursuant to 11 NYCRR §65-4.5(o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. 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.

Medical Necessity Issue.

Based upon the IME of Alan Handelsman, L.Ac. the EIP's future No-Fault acupuncture benefits were terminated on 7/17/2017. With respect to this matter, that includes one bill representing dates of service 7/26/2017 through 8/7/2017.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursable for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *AJS Chiropractic, P.C. v Travelers Ins. Co.*, 25 Misc.3d 140(A) (App Term 2009).

The Respondent must, at a minimum, establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity. *Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co.*, 21 Misc.3d 142A, 880 N.Y.S.2d 223 (2nd Dept.

2008). Additionally, it must be proven that said rationale is supported by evidence of the generally accepted medical/professional practices. *Nir v Allstate Ins. Co.*, 7 Misc.3d 544 (Civ Ct, Kings County 2005).

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant/provider which must then present its own evidence of medical necessity. See generally, *W. Tremont Med. Diagnostic, P.C. v. Geico Ins. Co.*, 2006 NY Slip Op 51871(U), 13 Misc. 3d 131(A), 824 N.Y.S.2d 759 (App. Term).

Where the denial is predicated upon a peer review report, and the peer review report establishes prima facie, that there was no medical necessity for the services performed, the provider must refute the peer review doctor's determination. See *A Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co.*, 16 Misc. 3d 131(A), 841 N.Y.S.2d 824, 2007 NY Slip Op 51342(U), (App. Term 2007).

Similarly, where the insurer denies the claim based upon an Independent Medical Examination (IME) of the Assignor, and the IME establishes prima facie that there was no medical necessity for continued treatment, the Applicant/provider bears the burden of demonstrating that the treatment at issue was medically necessary by a preponderance of the credible evidence. See, *Amato v. State Farm Ins. Co.*, 40 Misc. 3d 129(A), 2013 NY Slip Op 51113(U), (App Term 2013).

Findings of Fact.

To support their position, the Respondent submitted the IME report of Acupuncturist Handelsman, dated 6/28/2017. The Assignor was evaluated at Nyack Hospital where there were X-rays and CT scans performed which were negative for apparent fracture or acute pathology. His post-accident treatment included MRI studies of the bilateral knees, and both knees were diagnosed with tears. He was receiving physical therapy treatment and acupuncture. His medical history included Diabetes, mitral valve replacement and hypertension. He had been working at the time of the accident and was not working due to the accident at the time of the IME.

He presented with multiple complaints of pain. A review of the report of the exam showed that ranges of motion were within normal ranges, and a TCM (Traditional Chinese Medicine) exam was performed. The conclusion was that cervical and lumbar sprain/strain injuries were resolved and the obstruction in the Tai-yang meridians of cervical and lumbar spine were resolved. The examiner concluded that any further treatment or diagnostic testing was not needed, i.e., not medically necessary.

In opposition, the Applicant submitted a rebuttal report by Dr. Reyfman, Board Certified in Pain Medicine and Assistant Clinical Professor of Anesthesiology at SUNY Downstate Medical School. The IME examiner that the EIPO presented with complaints of pain in the cervical spine radiating to the shoulders with bilateral hand numbness. He also had complaints of pain in the lumbar spine radiating to bilateral legs to the knees. The pulse was "thready", and the tongue was swollen with slight white covering,

toothmarks and center crack. In the light of these positive findings that were consistently found on exam during the subject IME, the IME examiner incorrectly recommended no further treatment.

I find the rebuttal to be highly credible and sufficient to meet Applicant's shifted burden of establishing medical necessity for the treatment at issue. Applicant has established the medial necessity of the acupuncture treatment by a preponderance of the evidence.

The claim is granted to Applicant.

Fee Schedule Issue.

First, it is noted that the Applicant billed using the fees schedule created for medical doctors, however, the services were provided by a licensed acupuncturist. As a result, the Applicant was reimbursed at the chiropractor rate, which is the proper rate at the time the services were rendered. *See Great Wall Acupuncture v. Geico*, 26 Misc.3d 23, 893 N.Y.S.2d 420 (App. Term 2d Dept 2007).

Proper reimbursement for CPT 97810 was \$20.52 and for CPT 97811 at \$17.57. Thus, I find that the Applicant was properly reimbursed for dates of service 3/29/2017 through 7/12/2017.

The post-IME dates of service are 7/18/2017 and 7/24/2017. The Applicant is awarded the sum of \$42.02 for the exam on 7/18/2017 at the rate of \$20.52 for CPT 97810 and \$17.57 for CPT 97811.

In conclusion, Applicant is to be reimbursed for dates of service 7/18/2017 and 7/24/2017 at the sum of \$118.20. *This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.*

Applicant is entitled to statutory interest, attorney fees and the filing fee, as set forth in Sections 6. B, C and D, below.

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
	River Park Acupuncture PC	04/20/17 - 05/15/17	\$193.60	Denied
	River Park Acupuncture PC	05/17/17 - 06/19/17	\$228.80	Denied
	River Park Acupuncture PC	06/21/17 - 07/24/17	\$320.00	Denied
	River Park Acupuncture PC	03/29/17 - 04/18/17	\$222.62	Denied
	River Park Acupuncture PC	07/26/17 - 08/07/17	\$197.07	Awarded: \$118.20
Total			\$1,162.09	Awarded: \$118.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/13/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the **date noted above** until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

Respondent shall pay the Applicant attorney's fees in accordance with 11 NYCRR §65-4.6(d). As this matter was filed **after 02/04/2015**, this case is subject to the provisions promulgated by the Dept. of Financial Services in the Sixth Amendment to 11 NYCRR §65-4 (Ins. Reg. 68-D).

- 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 NY

SS :

County of Nassau

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

06/06/2023
(Dated)

Nancy Kramer Avalone

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:
c5852d81a4d6985acfafd5f28c79481e

Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 06/06/2023