

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PDA NY Chiropractic, P.C.  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No.	17-22-1274-4068
Applicant's File No.	GTLPPDA101822.006
Insurer's Claim File No.	1098702-01
NAIC No.	16616

**ARBITRATION AWARD**

I, Diane Flood Taylor, 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 09/27/2023  
Declared closed by the arbitrator on 09/27/2023

George T. Lewis from Law Offices of George T. Lewis, Jr., PC participated virtually for the Applicant

Luke Rosenberger from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,251.94**, 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

Whether the Applicant is entitled to recover for chiropractic treatment, which the Respondent has denied as medically unnecessary predicated on an independent medical examination.

Applicant is seeking reimbursement in the amount of \$1,251.94 for chiropractic treatment in connection with the management of injuries sustained by the Assignor, FT, a then 75-year-old eligible injured person who, on 5/30/21, was involved in a collision with the insured motor vehicle.

Respondent denied the disputed bills premised on the results of an independent medical examination by Robert Snitkoff, DC, conducted on 9/27/21.

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

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

In dispute in this Arbitration are three (3) bills for chiropractic treatment rendered between 2/24/22 and 4/19/22.

Respondent raised no issue or argument concerning Applicant's submission of proof of claim.

Applicant establishes its prima facie entitlement to reimbursement with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. See Insurance Law § 5106(a); Viviane Etienne Med. Care v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

The burden shifts to the Respondent to demonstrate a lack of medical necessity for the disputed services. See, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. See, Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co., 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); King's Med. Supply Inc. v. Country Wide Ins. Co., 5 Misc 3d 767, 783 N.Y.S. 2d 448. The medical rationale should be supported by evidence of the generally accepted medical professional practice. See, Nir v. Allstate Ins. Co., 7 Misc. 3d 544 (2005).

#### **IME**

Respondent denied reimbursement of Applicant's bills based upon an independent medical examination (IME) by Robert Snitkoff, DC, performed on 9/27/21.

**It is noted that Respondent failed to submit the IME report upon which its denial was predicated.**

Pursuant to 11 NYCRR 65-4.5 (o) (Regulation 68-D) the 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. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. See Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

"Although an arbitration panel may not overtly disregard the law, arbitrators are not strictly tethered to substantive and procedural laws and may do justice as they see it, provided that they do not violate a strong public policy, do not exceed a specifically enumerated limitation on their power and their decisions are not totally irrational [citations omitted]." Matter of Solow Building Co., LLC v. Morgan Guarantee Trust Co. of New York, 6 A.D.3d 356, 356, 776 N.Y.S.2d 547, 548 (1st Dept. 2004).

## Findings

Premised on the credible evidence in the record, I find that Respondent failed to prove a lack of medical necessity for the post-IME treatment at issue.

Accordingly, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Applicant. Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	PDA NY Chiropractic, P.C.	02/24/22 - 03/02/22	\$392.44	Awarded: \$392.44
	PDA NY Chiropractic, P.C.	03/09/22 - 04/11/22	\$687.60	Awarded: \$687.60
	PDA NY Chiropractic, P.C.	04/12/22 - 04/19/22	\$171.90	Awarded: \$171.90
Total			\$1,251.94	Awarded: \$1,251.94

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/11/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). In accordance with 11 NYCRR 65-3.9(c), interest shall be paid on this claim totaling \$1,251.94 from the date the arbitration was commenced.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d), i.e., 20 percent of the amount of first party benefits, plus interest thereon with no minimum fee and a maximum fee of \$1360.00. However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Westchester

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

09/27/2023

(Dated)

Diane Flood Taylor

#### **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:**  
7e180490d56cd5baecd0b32ad32bbcbf

### **Electronically Signed**

Your name: Diane Flood Taylor  
Signed on: 09/27/2023