

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nile Rehab Physical Therapy PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1293-6508

Applicant's File No. 162252

Insurer's Claim File No. 0665921557
SMK

NAIC No. 19232

ARBITRATION AWARD

I, Alina Shafranov, 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 11/01/2023
Declared closed by the arbitrator on 11/01/2023

Emilia Rutigliano, Esq. from Law Office of Emilia I. Rutigliano, P.C. participated virtually for the Applicant

Inna Vilig, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$257.40**, 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 Assignor, "PM", a 58-year-old female was involved in a motor vehicle accident as a driver on April 13, 2022. The Assignor sought medical treatment for her injuries sustained in the MVA and eventually came under the care of Nile Rehab Physical Therapy PC. Applicant seeks reimbursement for physical therapy treatment and PPE for dates of service 11/17/22-12/15/22. Respondent timely denied the claim based on the Independent Medical Examination (IME) by Pierce Ferriter, M.D. performed on 10/25/22. Respondent also asserted a fee schedule defense predicated on the New York State Workers' Compensation Medical Fee Schedule. The issues to be decided are whether the continuing treatment was medically necessary, and if so, whether the Applicant billed in excess of the fee schedule.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

In support of its contention that further orthopedic treatment was not medically necessary, Respondent relies upon the IME of Pierce Ferriter, M.D. performed on 10/25/22. The physical examination revealed no objective positive findings. All ranges of motion were within normal limits and all orthopedic and neurological testing was negative. Dr. Ferriter diagnosed the Assignor's injuries as resolved and opined that based on the physical examination no further orthopedic treatment was medically necessary.

I find that the examination report presents a factually sufficient cogent medical rationale in support of Respondent's lack of medical necessity defense. Dr. Ferriter did not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

To rebut the IME of Dr. Ferriter, Applicant offers the Rebuttal of Yasser Shalaby, PT, as well as numerous medical records. I find that Applicant has not sufficiently rebutted the contentions of the IME through its own medical records and the Rebuttal. Although the Rebuttal relies on physical therapy re-evaluations dated 11/17/22, 11/29/22 and 12/15/22, I find that these records are factually insufficient to rebut the negative findings

of Dr. Ferriter as they are not as comprehensive as the IME. Though these records confirm that treatment was rendered to the Assignor, they do not adequately support the medical necessity for ongoing treatment after the IME cut-off. There are no comprehensive orthopedic examinations in evidence which indicate that the Assignor required treatment for causally related injuries. I find that the orthopedic IME Report has not been refuted as the medical records submitted, as they do not sufficiently establish that the Assignor was in need of continuing care.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Respondent.

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 NY
SS :
County of New York

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

11/27/2023
(Dated)

Alina Shafranov

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
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2a024df92c15110519c2c2a73310a4cb

Electronically Signed

Your name: Alina Shafranov
Signed on: 11/27/2023