American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bialecki Chiropractic PC (Applicant)	AAA Case No.	17-23-1286-8807
	Applicant's File No.	n/a
- and -	Insurer's Claim File No.	21-5062160
	NAIC No.	32786
Progressive Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Mary Anne Theiss, 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: Claimant

1. Hearing(s) held on 11/15/2023
   Declared closed by the arbitrator on 11/15/2023

   Ian Besso, Esq. from The Sigalov Firm PLLC participated virtually for the Applicant

   Liz Peabody, CR from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,895.00**, 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 Claimant, a twenty-one-year-old female was the driver of a vehicle that was pulling out of a parking lot and was struck by another car on the driver's side. The Claimant was seat belted. The accident was on February 21, 2021.

   Applicant Bialecki Chiropractic PC is seeking reimbursement in the amount of $1,339.60 for the dates of service from March 16, 2022, through March 8, 2022.

   The denial of chiropractic care and treatment is based upon an examination of the Claimant by John Gaiser, D.C. performed on December 16, 2022.

The original amount claimed was $1,895.00, it was amended by agreement of the parties to $1339.60.

4. Findings, Conclusions, and Basis Therefor

The Claimant, a twenty-one-year-old female was the driver of a vehicle that was pulling out of a parking lot and was struck by another car on the driver's side. The Claimant was seat belted. The accident was on February 21, 2021.

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The Applicant has established a prima facie case of entitlement to benefits. Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut. , 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

Dr. Gaiser reviewed 12 medical records and went through the Claimant's history and the history of the accident. The Claimant consulted with Bialecki Chiropractic on February 22, 2021, with complaints of headache, neck pain, mid-back pain, and lower back pain radiating to the right arm. Dr. Gaiser noted the Claimant was referred to Dr. Roger for a neurosurgical consultation. This was performed on August 8, 2021. Dr. Roger referred the Claimant for physical therapy.

At the time of the examination, the Claimant was receiving physical therapy at Buffalo Rehab Group for low back pain and cervicalgia. The Claimant also had a consultation for pain management by Dr. Hsu on May 4, 2020 for mid-back and neck pain. The Claimant has an evaluation with DENT Neurology on March 23, 2021, for a concussive evaluation.

At the time of the examination, the Claimant was reporting ongoing headaches described as occipital and frontal occurring three to four times a week and associated with nausea. She stated that prior to the accident she had headaches one to two times per week. The Claimant reported that she was treated with DENT Neurology with trigger point

injections two to three years prior to the accident. She had a history of headaches prior to the motor vehicle accident in question. The headaches were occurring one to two times per week. Dr. Gaiser noted the Claimant had chiropractic treatment several years ago with Dr. Bialbecki for "adjustments" but Dr. Bialecki's records do not identify a past treatment history.

Dr. Gaiser examined the Claimant and his diagnosis was cervical sprain/strain, cervicalgia objectively resolved, lumbosacral sprain/strain, lumbago objectively resolved, cervical 4-5 discogenic degenerative changes, disc protrusion identified on MRI reports, lumbosacral retrolisthesis, protrusion identified on the MRI finding. Dr. Gaiser stated that the Claimant had some restrictions in her ability to perform range of motions as compared to the American Medical Association Guidelines to the Evaluation of Permanent Impairment Fifth Edition.

Dr. Gaiser stated that the limitations are associated with the discogenic degenerative changes that are identified on the diagnostic testing. He noted the chiropractic findings were unremarkable and neurologically there were no clinical signs of active radiculopathy. He noted that all the spinal orthopedic testing was negative. Dr. Gaiser stated that further chiropractic treatment would not be medically necessary. There's no medical necessity for massage therapy, further diagnostic testing, or durable medical equipment.

When an insurer, through a peer review or medical exam, presents sufficient evidence establishing a lack of medical necessity, the burden then shifts back to the applicant to present its own evidence of medical necessity. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131(A) (App. Term, 2nd Dept., 2006); Alfa Medical Supplies v. Geico General Ins. Co., 38 Misc. 3d 134(A) (App. Term, 2nd Dept., 2013).

John Bialecki, D.C. offered a rebuttal dated June 21, 2021. Dr. Bialecki stated that the Claimant had never been treated in his office before. Dr. Bialecki noted that the Claimant had fairly significant spondylosis at L5-S1 given her age. He noted that Dr. Roger's plan from April 12, 2021 states that theoretically, she may be a good candidate in the future for an L5-S1 ALIF but given her young age and accident I would certainly hold off as much as possible. He noted that there was significant L4-S1 disc herniation/extrusion that migrates slightly caudal in contacting both S1 nerve roots. The MRI of March 6, 2021, revealed an L5-S1 retrolisthesis and a posterior annular tear in a small central posterior disc herniation/protrusion contacting the S1 nerve root. Dr. Bialecki noted that these findings correlate with her subjective complaints and were not completely reported by Dr. Gaiser's examination. He noted that Dr. Gaiser did not document the annular tear nor the findings depicted in the cervical MRI.

I find that Dr. Gaiser does not set forth a clear factual basis and a medical rationale for Respondent's denial of Applicant's claim for the continued chiropractic care and treatment in dispute. I find that Respondent has not established a lack of medical necessity for continued chiropractic care and treatment.

It has been held that "For an expense to be considered medically necessary, the treatment, procedure, or service ordered by a qualified physician must be based on an objectively reasonable belief that it will assist in the patient's diagnosis and treatment and cannot be reasonably dispensed with. Such treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable

evidence and must be reasonable in light of the subjective and objective evidence of the patient's complaints." Nir v. Progressive Ins. Co., 7 Misc.3d 1006(A), 2005 N.Y. Slip Op. 50466(U) (Civ. Ct. Kings Co., Nadelson, J., Apr. 7, 2005).

I find Dr. Bialecki's rebuttal more credible and probative than Dr. Gaiser's examination analysis. I find that the continued chiropractic care and treatment were medically necessary. I do not sustain Respondent's defense to that effect. Said defense does not overcome Applicant's prima facie case of entitlement to No-Fault compensation.

The Applicant provided numerous bills. The Carrier did not give a breakdown as to what the adjustments in the fee schedule were per bill, however, the parties agree that the total amount due and owing based on the fee schedule is $1339.60 and that is the amount that is awarded for the dates of service in question.The bills are not individually awarded but grouped into one sum.

I want to thank the parties for taking the time to prepare their cases.

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**
	Bialecki Chiropractic PC	**03/16/22 - 03/16/22**	**$94.75**	**Denied**
	Bialecki			

	Chiropractic PC	**03/22/22 - 03/22/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**03/28/22 - 03/28/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**04/06/22 - 04/06/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**04/13/22 - 04/13/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**04/18/22 - 04/18/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**04/26/22 - 04/26/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**05/04/22 - 05/04/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**05/11/22 - 05/11/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**05/18/22 - 05/18/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**06/02/22 - 06/02/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**06/15/22 - 06/15/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**07/05/22 - 07/05/22**	**$94.75**	**Denied**
	Bialecki Chiropractic	**07/20/22 -**	**$94.75**	**Denied**

	PC	**07/20/22**		
	Bialecki Chiropractic PC	**08/17/22 - 08/17/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**09/08/22 - 09/08/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**09/28/22 - 09/28/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**10/24/22 - 10/24/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**11/16/22 - 11/16/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**12/22/22 - 12/22/22**	**$94.75**	**Denied**
	Bialecki Chiropractic PC	**03/16/22 - 12/22/22**	**$1,339.60**	**Awarded: $1,339.60**
Total			**$3,234.60**	**Awarded: $1,339.60**

B. The insurer shall also compute and pay the applicant interest set forth below. 02/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall compute and pay the applicant the amount of interest from the filing date of the request for arbitration, at a rate of two percent (2%) per month, simple interest (i.e., not compounded), using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR §65-3.9(c). The filing date, pursuant to the American Arbitration Association records, is as noted above interest is paid from the date of filing.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d). As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d). Subject to a maximum fee of $1,360.00.

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 NY

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

11/29/2023
(Dated)

Mary Anne Theiss

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:
ad2921b2817881a7c344c4bd7fee2739

Electronically Signed

Your name: Mary Anne Theiss
Signed on: 11/29/2023