

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PDA NY Chiropractic, P.C.  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No.	17-23-1286-4813
Applicant's File No.	GTLPPDA012423.004
Insurer's Claim File No.	22-8957517
NAIC No.	11851

**ARBITRATION AWARD**

I, Kenneth Rybacki, 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 11/27/2023  
Declared closed by the arbitrator on 11/27/2023

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

Danielle Mazzola from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,347.78**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The representatives for the parties stipulated that Respondent's denials were issued within applicable thirty-day claim-determination periods prescribed by Ins. Law Sec. 5106 and/or 11 NYCRR 65-3.8 and that Applicant's claims comported with applicable fee schedules.

3. Summary of Issues in Dispute

Whether Respondent's denial of Applicant's claim arising from a 1/19/22 accident for services provided to fifty-eight-year-old male E.S. during the period, 3/28/22 through

4/20/22 can be sustained. Respondent denied the claim on the ground that the Applicant failed to provide a response to Respondent's request for further verification of the claim within 120 days from the date of the initial request.

Whether continuing chiropractic treatment of the Assignor was medically necessary following Respondent's physical examination by Steven Schneider, D.C. on 5/13/22. Applicant's claims for services provided during the period 5/23/22 through 6/28/22 were denied based on Dr. Schneider's recommendations.

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

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions following the close of the record on 3/27/23 were admitted, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

*(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."*

This action for the payment of health services claims arises from a 1/19/22 accident. Respondent denied a claim for services provided during the period 3/28/22 through 4/20/22 based on a failure of the Applicant to submit a response to Respondent's verification requests within 120 days from the date that the initial request was made, 11 NYCRR 65-3.8(b)(3). This denial is sustained. Although Applicant argues that it responded to the request, Applicant's transmission report indicates that a response (Applicant's forwarding letter does not indicate what was enclosed) was forwarded to Nationwide via facsimile, not Respondent herein.

Applicant's remaining claims were denied based on the recommendations of the Respondent's examining chiropractor following a 5/13/22 examination of the Assignor.

It is well-settled that submission of a provider's claim form to the carrier is prima facie evidence of the necessity of the services contained therein, Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498; Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A), 784 N.Y.S.2d 918. An insurer's prima facie case rebutting the presumption of necessity attaching to a claim form is demonstrated through the submission of the insurer's expert's report setting forth a factual basis and medical rationale for the conclusion that its insured's injuries were resolved as of the date of the expert's physical examination, see, e.g., Utica Acupuncture, P.C. v. Interboro Ins. Co., 39 Misc.3d 139(A).

Respondent's expert performed a quantitative assessment of the ranges of motion of the Assignor's cervical and thoracolumbar spines as part of his evaluation. Restrictions as

great as 20% were found in cervical flexion, cervical extension, bilateral cervical rotation, lumbar flexion, lumbar lateral bending, and lumbar rotation. The expert fails to address these restrictions and show how it is that these restrictions were self-imposed and thus failed to rebut any presumptions attaching to the claims, Torres v. Garcia, 59 A.D.2d 705 (2d Dept. 2009); Cuevas v. Compote Cab Corp., 61 A.D.2d 812 (2d Dept. 2009). Consequently, I find that continuing treatment was medically necessary and award Applicant \$456.59.

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
	<b>PDA NY Chiropractic, P.C.</b>	<b>03/28/22 - 04/20/22</b>	<b>\$891.19</b>	<b>Denied</b>
	<b>PDA NY Chiropractic, P.C.</b>	<b>05/23/22 - 06/20/22</b>	<b>\$385.34</b>	<b>Awarded: \$385.34</b>
	<b>PDA NY Chiropractic, P.C.</b>	<b>06/28/22 - 06/28/22</b>	<b>\$71.25</b>	<b>Awarded: \$71.25</b>
<b>Total</b>			<b>\$1,347.78</b>	<b>Awarded: \$456.59</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/13/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 2/13/23 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate plus interest, in accordance with the limitations set forth in 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 NY  
SS :  
County of Suffolk

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

12/01/2023  
(Dated)

Kenneth Rybacki

### **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:**  
2cc493180d7e4f3e5b447c1b4fd13383

### **Electronically Signed**

Your name: Kenneth Rybacki  
Signed on: 12/01/2023