

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dr. Abrams Piazza & Julewicz DC, LLP
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-22-1271-7472

Applicant's File No. FDNY22-59523

Insurer's Claim File No. 0659202378

NAIC No. 19232

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 11/30/2023
Declared closed by the arbitrator on 11/30/2023

Tom Fass from Fass & D'Agostino, P.C. participated virtually for the Applicant

Karen Stulgaitis from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,883.78**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$2,292.00 in consideration of the fee schedule.

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 \$2,883.78 for chiropractic treatment in connection with the management of injuries sustained by the Assignor, VG, a then 52-year-old eligible injured person who, on 1/27/22, was involved in a collision with the insured motor vehicle.

Respondent denied the bills premised on the results of an independent medical examination by Vincent Notabartolo, DC, conducted on 6/15/22.

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 charges for chiropractic treatment rendered between 7/7/22 and 9/3/22.

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 based upon an independent medical examination (IME) by Vincent Notabartolo, DC, performed on 6/15/22. Following the examination of Assignor, Dr. Notabartolo stated, in relevant part: DIAGNOSIS: resolved cervical sprain; resolved lumbar sprain; normal thoracic spine.

At the time of the IME, claimant complained of "nervousness, dizziness, headaches, neck pain radiating to the arms and hands with numbness and lower back pain radiating to her legs and feet."

Upon examination, Dr. Notabartolo found normal range of motion, no evidence of muscle spasm, no motor or sensory deficits were noted, no tenderness to palpation was found, and the examiner indicated there were negative results on cervical, thoracic and lumbar spine provocative tests administered.

The doctor noted no objective findings on examination. Premised on Dr. Notabartolo's clinical findings, Respondent denied further chiropractic intervention, effective 7/7/22.

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. See West Tremont Medical Diagnostic P.C. v GEICO, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2nd & 11th Dists, 2006).

Medical Evidence

Applicant relied on reports of examinations on 7/11/22 and 8/23/22 which reflect range of motion deficits in the cervical, thoracic and lumbar spine, in addition to tenderness and positive provocative test results, inter alia, cervical compression test, foraminal compression test, Soto Hall test, distraction test, Bechterew's Sitting test, Kemp's test, Lasegue's test, Patrick's FABERE lumbar test, Straight Leg Raising test, and Milgram's test, which indicate positive objective findings correlated with unresolved injuries.

It is noted that the Daily notes/SOAP notes are reflective of positive findings at or near the time of the IME.

Findings

Premised on the credible objective evidence in the record, I find that the Applicant has submitted sufficient evidence to rebut the Respondent's independent medical examination and has established the medical necessity for the post-IME treatment at issue.

I find applicant proved medical necessity by a preponderance of the credible evidence.

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	Amount Amended	Status
	Dr. Abrams Piazza & Julewicz DC, LLP	07/07/22 - 09/03/22	\$2,883.78	\$2,292.00	Awarded: \$2,292.00
Total			\$2,883.78		Awarded: \$2,292.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/24/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the initiation date for this case until the date that payment is made at two percent (2%) 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 Applicant an attorney's fee equal to twenty percent (20%) of the total amount of first-party benefits awarded, plus interest thereon, as provided for in 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 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.

12/04/2023

(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:
f3909bc9bc4323332448f9391d37e4e8

Electronically Signed

Your name: Diane Flood Taylor
Signed on: 12/04/2023