

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Fred Jones Chiropractic PC d/b/a Sunrise
Chiropractic
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

| | |
|--------------------------|-----------------|
| AAA Case No. | 17-23-1301-4304 |
| Applicant's File No. | 23-000655 |
| Insurer's Claim File No. | 32-12L4-56S |
| NAIC No. | 25178 |

ARBITRATION AWARD

I, Michael Korshin, 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 12/01/2023
Declared closed by the arbitrator on 12/01/2023

Robert Bott from The Licatesi Law Group, LLP participated virtually for the Applicant

Bryan Visnius from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,867.26**, 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

This arbitration arises out of several bills in the total amount of \$3,867.26 for chiropractic treatment provided from 7/1/22 to 12/21/22. The Assignor, a 41-year-old male, was involved in a motor vehicle accident on 10/12/20. Respondent timely denied the services based upon an independent medical exam conducted by Anthony V. Badalamenti, D.C. on 8/5/21. Dr. Badalamenti found that no further chiropractic treatment was necessary. The effective cut-off date for further treatment was 11/10/21. The issue in dispute is whether the services provided were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA maintained by the American Arbitration Association. This decision is based upon the documents reviewed as well as the arguments made by the parties' representatives at the arbitration hearing.

This arbitration arises out of several bills in the total amount of \$3,867.26 for chiropractic treatment provided from 7/1/22 to 12/21/22. The Assignor, a 41-year-old male, was involved in a motor vehicle accident on 10/12/20. Respondent timely denied the services based upon an independent medical exam conducted by Anthony V. Badalamenti, D.C. on 8/5/21. Dr. Badalamenti found that no further chiropractic treatment was necessary. The effective cut-off date for further treatment was 11/10/21. The issue in dispute is whether the services provided were medically necessary.

The submission of Respondent's NF-10 denial of claim forms, which admitted the receipt of the relevant claim forms, established prima facie that the insurer received the claim referenced therein as having been submitted by the provider and that the insurer did not pay the claim. *See, New York Diagnostic Med. Care, P.C. v. Geico Ins. Co.*, 2013 NY Slip Op 23360 (App Term 2d, 11th & 13th Jud Dists. Oct. 8, 2013); *Lopes v. Liberty Mutual Ins. Co.*, 24 Misc.3d 127(A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

Accordingly, I find that Applicant has established its prima facie case of entitlement to No-Fault benefits.

Dr. Badalamenti examined the Assignor and reviewed several medical records on 8/5/21. The Assignor presented at the exam with complaints of pain in the neck. Dr. Badalamenti's examination was mostly normal, and he found that the Assignor's injuries were resolved. His assessment was lumbar, thoracic, and cervical spine sprain/strain, resolved. Accordingly, I find Dr. Badalamenti's IME report sufficient to set forth a factual basis and medical rationale for the conclusion that further services were not medically necessary. *E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

I am persuaded by the medical reports submitted by Applicant sufficiently to overcome the findings of Dr. Badalamenti as to a lack of medical necessity. It is the Applicant's burden, ultimately, to establish the medical necessity of the services at issue. *See Insurance Law § 5102; Shtarkman v. Allstate Insurance Co.*, 2002 NY Slip Op 50568(U), 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance company). The insured or the provider bears the burden of persuasion on the question of medical necessity. *Bedford Park Medical Practice P.C. v. American Transit Ins. Co.*, 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 NY Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). Applicant submitted contemporaneous medical

examinations and diagnostic testing to rebut the findings of Dr. Badalamenti. Of note are the chiropractic exams dated 7/21/21 and 8/31/21 shortly after the IME. These exams revealed positive orthopedic testing and decreased range of motion. I find the exam offered by Applicant to be more credible and persuasive as to the necessity of further chiropractic treatment after the IME. Also, a more comprehensive exam was conducted on 7/29/21, shortly before the IME, which revealed significant positive objective findings indicating that the Assignor's injuries were not resolved. In sum, the totality of the evidence weighs in favor of Applicant in so far as further treatment was medically necessary.

Applicant billed in excess of the fee schedule and adjusted the fee amounts sought at the hearing which are reflected in the reduced award amount.

Based on the foregoing, an award will be entered in favor of Applicant in the amount of \$3,695.85.

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 |
|---------|---------|--------------|--------|
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| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 07/01/22 - 07/01/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 07/20/22 - 07/20/22 | \$156.44 | Awarded: \$143.25 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 07/23/22 - 07/23/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 07/25/22 - 07/25/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 07/28/22 - 07/28/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 08/03/22 - 08/03/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 08/08/22 - 08/08/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 08/16/22 - 08/16/22 | \$120.25 | Awarded: \$114.60 |

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| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 08/30/22 - 08/30/22 | \$156.44 | Awarded: \$143.25 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 09/06/22 - 09/06/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 09/09/22 - 09/14/22 | \$240.50 | Awarded: \$229.20 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 09/19/22 - 09/19/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 09/22/22 - 09/23/22 | \$240.50 | Awarded: \$229.20 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 09/28/22 - 09/28/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 10/03/22 - 10/03/22 | \$156.44 | Awarded: \$143.25 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 10/12/22 - 10/12/22 | \$120.25 | Awarded: \$114.60 |

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|--|------------------------------------------------------------------------------|--------------------------------|-----------------|------------------------------|
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/02/22 - 11/02/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/08/22 - 11/08/22 | \$156.44 | Awarded: \$143.25 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/14/22 - 11/14/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/15/22 - 11/15/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/18/22 - 11/18/22 | \$120.25 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 11/23/22 - 11/28/22 | \$240.50 | Awarded: \$229.20 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 12/01/22 - 12/02/22 | \$229.20 | Awarded: \$229.20 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 12/06/22 - 12/06/22 | \$114.60 | Awarded: \$114.60 |

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|--------------|------------------------------------------------------------------------------|--------------------------------|-------------------|--------------------------------|
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 12/07/22 - 12/07/22 | \$114.60 | Awarded: \$114.60 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 12/12/22 - 12/12/22 | \$143.25 | Awarded: \$143.25 |
| | Fred Jones Chiropractic PC d/b/a Sunrise Chiropractic | 12/21/22 - 12/21/22 | \$114.60 | Awarded: \$114.60 |
| Total | | | \$3,867.26 | Awarded: \$3,695.85 |

B. The insurer shall also compute and pay the applicant interest set forth below. 05/29/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.6(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360." Id.

- 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 Nassau

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

12/05/2023
(Dated)

Michael Korshin

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:
b1c7a2196f735d933dadd8349dd957f

Electronically Signed

Your name: Michael Korshin
Signed on: 12/05/2023