

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Van Siclen Chiropractic PC
(Applicant)

- and -

New York Marine & General Insurance
Company
(Respondent)

AAA Case No. 17-23-1283-2728

Applicant's File No. N/A

Insurer's Claim File No. EWR00222306

NAIC No. 16608

ARBITRATION AWARD

I, Inez Beyrer, 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: the patient

1. Hearing(s) held on 11/20/2023
Declared closed by the arbitrator on 11/20/2023

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Max Ranzato, Esq. from Law Office of Jason Tenenbaum, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$144.60**, 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 patient was a 36-year-old female passenger in a motor vehicle involved in an accident on November 13, 2021. Applicant seeks reimbursement for chiropractic services rendered from Stember 26, 2022, to October 5, 2022. Respondent denied payment of the bill based on the results of an Independent Medical Examination (IME) of Ernesto D. Seldman, M.D., dated December 7, 2022.

The issue is whether Respondent may sustain its defense.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon.

A denial claiming lack of medical necessity must be supported by a peer review, IME report or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. See Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc3d 975; Citywide Social Work, et al. v. Travelers Indemnity Co., 3 Misc. 3d 608. See also Amaze Medical Supply, Inc. v. Eagle Insurance Co., 2 Misc. 3d 128(A). The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

Respondent submits the IME report of Dr. Seldman, who conducted a physical examination of the patient on December 7, 2022. Dr. Seldman's report indicate that "treatment to date has been reasonable and necessary." He then concludes that the patient had reached pre-accident status and no further treatment is necessary going forward.

Applicant points out that the treatment here is before the IME date, and that this IME is not applicable to this bill.

I agree. The treatment here is before the IME itself. The report even indicates that the treatment to date was reasonable and necessary.

An award is issued in favor of Applicant. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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
	Van Sclen Chiropractic PC	09/26/22 - 10/05/22	\$144.60	Awarded: \$144.60
Total			\$144.60	Awarded: \$144.60

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay Applicant the amount of interest computed from the date of the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9 (c).

C. Attorney's Fees

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

Applicant is entitled to one attorney fee in accordance with 11 NYCRR 65-4.6(d).

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

12/11/2023
(Dated)

Inez Beyrer

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:
608e99e3af613def0865005ee10c7a72

Electronically Signed

Your name: Inez Beyrer
Signed on: 12/11/2023