

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Excellent Choice Physical Therapy PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1293-7862

Applicant's File No. STLG23-62423

Insurer's Claim File No. 0610306045

NAIC No. 29688

ARBITRATION AWARD

I, Felix Papadakis, 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/IP

1. Hearing(s) held on 12/12/2023
Declared closed by the arbitrator on 12/12/2023

John Faris, Esq. from Strauss Terry Law Group, PLLC participated virtually for the Applicant

Adva White, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$804.00**, 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

Whether the Applicant is entitled to reimbursement for medical services provided to the Assignor which were denied with the defense of medical necessity. The date of accident was 12/9/20.

The dates of service began on 11/2/22.

The IP was female, with initials MN.

The denials were timely and supported by an IME (Dr. Stuart Springer). There is a rebuttal and an addendum.

The services themselves were conservative care treatments (PT).

The hearing was conducted by Zoom.

I have previously decided this matter in AAA 17-22-1273-9989 and in three other matters wherein this Assignor treated after the negative IME.

The instant hearing was conducted by Zoom.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the evidence as maintained in the respective files of the parties and also considered the oral arguments of the parties.

This decision is final as to the issue before me.

The matter has its crux on the issue of medical necessity.

Here is the relevant case law on medical necessity:

The applicant has made a prima-facie showing of its entitlement to reimbursement, as a matter of law, by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the facts and the amount of the loss sustained, were mailed and received and that payment of no-fault benefits is overdue. See, *Mary Immaculate Hospital v. Allstate Ins. Co.*, 5 A.D.3d 742 (2004).

Once Applicant has established a prima facie case, the burden then shifts to Respondent to establish a lack of medical necessity with respect to the benefits sought. See, *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc3d 1025A (2005).

"Pursuant to the statutory and regulatory framework governing the payment of no-fault automobile benefits, insurance companies are required to either pay or deny a claim for benefits within 30 days of receipt of the claim (see Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]).

ANALYSIS:

This matter is a continuum of care on which claims were made and on which my decisions are noted in the ECF.

There are 4 prior matters in which I upheld the IME of the Respondent.

Again, the date of accident was 12/9/20.

The 4 matters are (in date order):

#9980 with dates of service 9/17/21 through 11/10/21.

#9990 with dates of service 11/17/21 through 4/15/22

#9989 with dates of service 4/29/22 through 7/29/22

#2619 with dates of service 8/5/22 through 10/7/22.

The identical Assignor is in issue as is the identical Applicant provider.

THIS matter begins its treatment on 11/2/22 and continues to 12/2/22.

The proofs are also identical with Dr. Springer as the IME provider who previously had recommended, and with which I agreed, the termination of care.

The rebuttal is by Lino Chang, PT.

In #9989, I found as follows:

I find that the proofs presented by the Respondent are the far superior. On 5/21/21, Dr. Springer, an orthopedic surgeon, performed all relevant testing with regard to a complete IME. There was range of motion testing and objective testing and all signs pointed to a recovered patient. The fact that the patient complained of pain cannot be a guiding force as it is objective testing that must rule, to wit, if there is credible compromise confirmed by objective testing, treatment would be necessary. But in this case, complaining of pain does not allow a patient to continue with care unless that pain is generated by something and in this case the objective testing performed by Dr. Springer, an orthopedic surgeon, pointed to no deficits in the condition of the Assignor. Therefore I must find for the Respondent on these three matters and cannot rationally find for the Applicant. In a weighing of proofs 1) the Applicant's physical therapist cannot be taken as credibly as a surgeon and 2) the alleged contemporaneous medical report was far too removed from the first date of service in issue. The remaining dates of service suffer the same fate as they were after the beginning of care and there were no other medical reports submitted by the Applicant to substantiate same. The claims are all denied. I am more persuaded by Dr. Springer. Accordingly, for the reasons delineated above, I find in favor of the Respondent.

*

I repeated that finding in all four matters which predate this matter.

In this matter there is also an addendum by Dr. Springer, who states:

At your request I performed an addendum on the above claimant. I have been asked to address the rebuttal from Lino Chuang, P.T. My independent medical evaluation took place five months after the date of accident. Based on my review of the medical records and physical examination, I stand by my original findings. Despite claimant's subjective complaints of pain, my exam revealed no objective findings of injury caused by the

accident in question. Additionally, I see no consultation reports around the time of my examination. The rebuttal letter states that physical therapy was given for complaints of persistent neck pain over a year after the accident.

Pain, in and of itself, is not a reason to continue with PT unless there are objective findings, which there were not in this case. In addition, I find that the credibility of the provider of the IME to be superior to the PT provider of the Applicant.

Taking an inference from the 4 prior decided cases, I cannot rationally find for the Applicant.

I am again more persuaded by the IME provider.

The claim must be denied.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NJ

SS :

County of Ocean

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

12/12/2023
(Dated)

Felix Papadakis

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:
de1d0e99a90a3e565c0af720d69656ef

Electronically Signed

Your name: Felix Papadakis
Signed on: 12/12/2023