

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JTK Chiropractic Care PC
(Applicant)

- and -

Kemper/Lumbermans/Kemper A Unitrin
Business
(Respondent)

AAA Case No. 17-23-1288-7298
Applicant's File No. GTLJTK090722.007
Insurer's Claim File No. 22123727128
NAIC No. 10914

ARBITRATION AWARD

I, Robyn McAllister, 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 12/12/2023
Declared closed by the arbitrator on 12/12/2023

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

Christine Lee, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,759.16**, 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 Respondent properly denied Applicant's claim for performing spinal ultrasounds for Assignor (JP), a 30 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on June 1, 2022, based on a peer review by Kevin Portnoy, D.C.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1759.16 for performing ultrasounds of the cervical, thoracic, lumbar and sacral regions on September 6, 2022 for Assignor (JP), a 30 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on June 1, 2022. Respondent timely denied Applicant's claim predicated on a peer review dated October 27, 2022 by Kevin Portnoy, D.C.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the spinal ultrasounds were not medically necessary. I disagree. I was not persuaded by the peer review report by Dr. Portnoy, submitted by Respondent in support of its denial.

Dr. Portnoy noted that following the accident, Assignor came "under the care of Dr. Rajban, a chiropractor, for neck pain, mid back pain and low back pain." Dr. Portnoy opined that "the Ultrasounds were not medically necessary is based upon the fact that there are no medical records from the referring doctor to indicate that he suspected any muscle injury, peripheral nerve injury, infection, masses, abscesses, cysts, tumors, hemorrhages or hematomas, which the performance of the Ultrasounds would detect." He added that "the records do not indicate how the performance of the Ultrasounds, will aide in devising, altering, reducing the number of visits to his office or enhancing the clinical prognosis of the claimant."

Dr. Portnoy asserted that "based upon a review of the records the claimant sustained soft tissue injury. The standard of care for these types of injuries would be evaluation by a physician, ordering of plain radiographs (only if there is suspicion of fracture or a severe mechanism of injury), prescribing of medications such as anti-inflammatory medications, rest and/or conservative care. If there is deterioration in the condition or progressive, worsening neurological deficits, MRI may be indicated at that point in time. At that point, interventional pain management or surgery may be indicated depending upon the results of the advanced imaging or the progression of the condition. However, the standard of care in chiropractic does not involve the routine prescribing of Ultrasounds in soft tissue injuries."

Dr. Portnoy argued that "the claimant's treatment consists of conservative care and this is not an intervention dependent on the results of the Ultrasounds. There was no description of any alternative invasive or surgical procedures under consideration to which the information obtained from the Ultrasounds would have been necessary to providing optimal treatment to this claimant. Decision regarding the claimant's

chiropractic care can be made in the absence of the Ultrasounds. The records fail to provide a differential diagnosis or any indication of a diagnostic dilemma to warrant the referral for the Ultrasounds."

Dr. Portnoy further asserted that "Indications for musculoskeletal ultrasound include, but are not limited to: 1) pain or dysfunction, 2) soft tissue or bony injury, 3) tendon or ligament pathology, 4) arthritis, synovitis, or crystal deposition disease, 5) intra-articular bodies, 6) joint effusion, 7) nerve entrapment, injury, neuropathy, mass or subluxation, 8) evaluation of soft tissue masses, swelling, or fluid collection, 9) detection of foreign bodies in the superficial soft tissue, 10) planning and guiding for an invasive procedure, 11) congenital or developmental anomalies, 12) postoperative or post procedural evaluation. MSK ultrasound should be performed when there is a valid medical reason."

I find that Dr. Portnoy's peer review was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to demonstrate medical necessity. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006).

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial office visit by Rajnita Rajbian, D.C., and testing report and rebuttal to the peer review by Bruce Jacobson, D.C. In addition, Dr. Jacobson testified on Applicant's behalf. I was persuaded by the medical evidence and testimony that the ultrasound testing was warranted.

According to Dr. Jacobson, Assignor was referred to him by Dr. Rajbian to perform the ultrasound assessments for diagnostic clarity and to perform more targeted chiropractic treatment. Dr. Jacobson asserted that in accordance with the standard of care set forth by Dr. Portnoy in his peer review, Assignor met the criteria for ultrasound testing. Specifically, he noted that Assignor had "pain or dysfunction," "soft issue injury," "subluxations," and the testing was performed "to evaluate soft tissue swelling."

Dr. Jacobson also pointed out in his rebuttal that "this patient received trigger point injections from the PA under the supervision of the primary medical doctor. Trigger points are utilized for muscle spasm, dysfunction and pain which confirms that this patient was not getting better with conservative therapy and additional nonconservative therapy such as trigger point injections. The in office chiropractic treatment notes also show that this patient was not getting significant improvement with the therapy and documents muscle spasm, decreased range of motion, and pain and dysfunction."

Dr. Jacobson concluded that "the diagnostic ultrasound that was performed on this patient to determine the specific location of the muscle spasm and the severity of the

muscle spasm if they were present. The criteria for ultrasound was met on this patient who had pain and dysfunction, muscle spasm, and soft tissue injury."

I find that Dr. Jacobson's rebuttal and testimony meaningfully referred to and rebutted the conclusions set forth in the peer review report. *See High Quality Medical, P.C. v. Mercury Ins. Co.*, 26 Misc.3d 145(A) (App. Term 2d, 11th & 13th Dists. 2010). Dr. Jacobson demonstrated that Assignor met the criteria for testing set forth by the peer review. Furthermore, I was not persuaded by Dr. Portnoy's citations to "RF Wireless World" and "Spine Universe," which are not credible medical authority. Therefore, I find that Applicant satisfied its burden of demonstrating medical necessity for the spinal ultrasounds and that Respondent improperly denied Applicant's claim.

Accordingly, Applicant is awarded \$1759.16, the entirety of its claim.

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
	JTK Chiropractic Care PC	09/06/22 - 09/06/22	\$1,759.16	Awarded: \$1,759.16
Total			\$1,759.16	Awarded: \$1,759.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/01/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from March 1, 2023, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee in accordance with 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 Westchester

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

12/20/2023
(Dated)

Robyn McAllister

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:
f8a07cc5765c044852d4cd254bb2e99f

Electronically Signed

Your name: Robyn McAllister
Signed on: 12/20/2023