American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brenner Chiropractic (Applicant)	AAA Case No.	17-23-1300-0513
	Applicant's File No.	NF 3736049
- and -	Insurer's Claim File No.	0679305334 2MM
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Alina Shafranov, 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 11/29/2023
   Declared closed by the arbitrator on 11/29/2023

   Clifford Ryan, Esq. from The Law Office of Thomas Tona, PC participated virtually for the Applicant

   Olga Gromyko, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$750.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

   At the hearing, Applicant's counsel reduced the total amount claimed to $566.78 in accord with the New York Workers' Compensation Medical Fee Schedule ("fee schedule"). The Demand for Arbitration is hereby amended accordingly.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Applicant, "NSB" a 33-year-old female was involved in a motor vehicle accident as a passenger on August 1, 2022.The Assignor sought medical treatment for her injuries sustained in the MVA and eventually came under the care of Kerry Wittich, D.C. Applicant seeks reimbursement for chiropractic treatment for dates of service 2/9/23-3/28/23.Respondent issued a timely denial and partially reimbursed the Applicant for date of service 2/9/23 asserting a fee schedule defense premised on the New York State Workers Compensation Medical Fee Schedule. Respondent timely denied the remainder of the bills based on the Independent Medical Examination (IME) by John Johnson, D.C. performed on 1/12/23.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

Date of service 2/9/23-Fee Schedule

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See, Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

Notice is taken that Applicant billed for chiropractic treatment under CPT Codes 98941 and 97124. Respondent issued a timely denial and partially reimbursed the Applicant asserting the following fee schedule defense: "When performing a re-evaluation including multiple procedures and/or modalities on the same day, the maximum number of relative value units is limited to 15.0 or the amount billed, whichever is less for all providers combined. (New York Workers' Compensation Medical Physical Medicine

Fee Schedule Ground Rule 8, Chiropractic Physical Medicine Ground Rule 2, Acupuncture Medicine Fee Schedule Ground Rule 1A, Physical Therapy and Occupational Therapy Fee Schedule Ground Rule 2)."

The New York State Worker's Compensation fee schedule Ground Rules provide that when multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to 12 units per patient regardless of how many providers.

Respondent issued partial reimbursement and asserted that the maximum allowance under the fee schedule per date of service without an E/M service is 12 units. Respondent has submitted evidence to show that it reimbursed another healthcare provider (Acupuncture Health Works) for acupuncture modalities on the date at issue herein. Respondent has also uploaded a copy of a cashed check issued to the Applicant.

I find that Respondent has properly reimbursed the Applicant pursuant to the fee schedule. The revised rules in the applicable fee schedule indicate the limitation for treatment is per date of service regardless of how many providers are treating. Respondent has submitted supporting evidence of proper reimbursement of the maximum units for the dates of service at issue; therefore, no further payment is due. Moreover, Applicant has not refuted Respondent's evidence. Accordingly, Applicant's claim for date of service 2/9/23 is denied.

Dates of service 2/14/23-3/28/23

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

In support of its contention that further chiropractic treatment was not medically necessary, Respondent relies upon the IME of John Johnson, D.C. performed on 1/12/23. The physical examination revealed no objective positive findings. All ranges of motion were within normal limits and all orthopedic and neurological testing was negative. Dr. Johnsondiagnosed the Assignor's injuries as resolved andopined that based on the physical examination no further chiropractic treatment was medically necessary.

I find that the examination report presents a factually sufficient cogent medical rational in support of Respondent's lack of medical necessity defense. Dr. Johnsondid not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West

TremontMedical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

To rebut the IME of Dr. Johnson, Applicant relies on numerous medical records. I am convinced that the IME Report of Dr. Johnson has been adequately refuted by the evidence collectively. The clinical examination of the Assignor on 1/17/23 by Kerry Wittich, D.C., revealed objective findings of reduced ranges of motion and positive orthopedic testing in the cervical and lumbar spine. The examination report notes numerous objective findings and is contemporaneous to the IME. The Assignor continued to report subjective complaints, and the objective exam findings confirmed that continued chiropractic treatment was warranted beyond the cutoff of benefits. Accordingly, Applicant is awarded $530.11 for this portion of the claim.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant in the amount of $530.11, the remainder of the claim is 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 applicant is AWARDED the following:

A.

		Claim	**Amount**	

Medical		From/To	Amount	Amended	Status
	Brenner Chiropractic	**02/09/23 - 03/28/23**	**$750.00**	**$566.78**	**Awarded: $530.11**
Total			**$750.00**		**Awarded: $530.11**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/18/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed **after**February 4, 2015, this case is subject to the provisions promulgated by theDepartment of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 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 New York

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

12/26/2023

(Dated) Alina Shafranov

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:
e713f80d0af50f9d89dbda1be8640019

Electronically Signed

Your name: Alina Shafranov
Signed on: 12/26/2023