

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hunt City Chiropractic, LLP  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-22-1277-3947

Applicant's File No. 3117161

Insurer's Claim File No. 0420663478-02

NAIC No. 29688

**ARBITRATION AWARD**

I, Regina Anzalone Kurz, 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 injured party.

1. Hearing(s) held on 12/28/2023  
Declared closed by the arbitrator on 12/28/2023

Melissa Scotti, Esq. from Law Offices of Andrew J. Costella Jr., Esq. participated virtually for the Applicant

Michael Rago, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,986.47**, 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

No-Fault health benefits claimed for chiropractic treatment provided to the injured party, a 37-year-old female, during the period of November 2, 2016 through August 23, 2027 following her involvement in an automobile accident on July 11, 2016. Respondent denied the claim in a timely fashion pursuant to the results of an Independent Medical Examination conducted by Dr. Janice Salayka, DC, LAC on October 27, 2016. The effective date of termination is November 11, 2016. A fee schedule defense was also asserted for a pre-IME denial portion of the claim.

#### 4. Findings, Conclusions, and Basis Therefor

As per 11 NYCRR Section 65-4.2(3)(iii), often referred to as the "Rocket Docket," the written record is deemed closed upon receipt of the respondent's submissions OR the expiration of the time period set forth for same, 30 calendar days. **Documents received by the American Arbitration Association after the close of conciliation and marked "late" were not considered by the undersigned in making this Award.**

It is well-settled that a health care provider establishes its *prima facie* entitlement to No-Fault Benefits under Article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 AD3d 742 (2nd Dept.2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc. 3d 128A 784 NYS2d 918, 2003 N.Y. Slip Op. 251701U [App.Term, 2d & 11th Jud. Dists.]. I find that Applicant has met its *prima facie* threshold.

After a *prima facie* case has been presented, the claim must generally be paid or denied within 30 days, or it is "overdue," commencing the accrual of interest and attorney fees. See, N.Y. Ins. Law § 5106[a] (McKinney 2000); 11 NYCRR § 65-3.8(a)(1), *Presbyterian Hospital v. Maryland Cas. Co.*, 90 N.Y.2d 274, 660 N.Y.S.2d 536 (1997).

The burden now shifts to the insurer to show lack of medical necessity. See *Elm Medical P.C. v. American Home Assurance Co.*, 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 [Civ. Ct., Kings Co., 2003]; *Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co.*, 196 Misc. 2d 801, 766 NYS2d 748 [Civ. Ct., Queens Co., 2003].

Upon a showing of lack of medical necessity through a peer review, an Applicant is required to rebut same. See *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table), 2007 N.Y. Slip Op. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007).

Where a fee schedule defense has been asserted, it has been held that the insurer has the burden of coming forward with competent evidentiary proof to support its fee schedule reduction or denial. See, e.g., *Roberts Physical Therapy, P.C. v. State Farm Mutual Automobile Insurance Company*, 13 Misc.3d 172, 3006 N.Y. Slip Op. 26240 (N.Y. Civ. Ct. Kings Co. 2006).

In the absence of such proof, a defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travelers Indemnity Company*, 11 Misc. 3d 145(A), 2006 N.Y. Slip Op. 50841(U) (App. Term 1st Dept. 2006).

However, an arbitrator is permitted to take judicial notice of the workers' compensation fee schedule. See, *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2d Dept. 2009); *LVOV Acupuncture, P.C. v. Geico Ins. Co.*, 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011); *Natural*

Acupuncture Health, P.C. v. Praetorian Ins. Co, 30 Misc.3d 132(A), 2011 NY Slip Op 50040(U) (App Term, 1st Dept., 2011).

This is a claim for chiropractic treatment provided to the injured party, a 37-year-old female, during the period of November 2, 2016 through August 23, 2027 following her involvement in an automobile accident on July 11, 2016.

Respondent denied the claim in a timely fashion pursuant to the results of an Independent Medical Examination conducted by Dr. Janice Salayka, DC, LAC on October 27, 2016. The effective date of termination is November 11, 2016.

A fee schedule defense was also asserted.

Dr. Salayka made no positive objective findings upon examination. The carrier's consultant returned a diagnosis of resolved cervical and lumbar strain. Based on her assessment, she opined that no further chiropractic treatment, testing, household help, transportation, or durable medical equipment was warranted.

Applicant has offered extensive treatment records and test results which serve to refute Dr. Salayka's assessment. This includes a letter of medical necessity from the treating chiropractor dated October 25, 2016. Noted therein is the fact that MRI testing of the cervical and lumbar spines confirmed multiple areas of disc involvement. This was not appreciated by the IME examiner, who consequently made an under call of the patient's injuries. As such, I find that the medical necessity of the services rendered in the post-IME denial period has not been disproved.

Benefits claimed for dates of service November 2<sup>nd</sup> and 9<sup>th</sup>, 2016 are denied. Respondent has established that its fee schedule calculations are correct and supported by the evidence as to these bills.

Upon careful consideration of the record, Applicant is awarded the sum of \$2,963.35.

Pursuant to the Regulations, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any party or witness or raise any issue that she deems relevant to rendering an Award that is consistent with the Insurance Law and the Regulations. 11 NYCRR Section 65-4.5 (o) (1).

Therefore, based upon the foregoing, Applicant is awarded No-Fault health benefits in the sum of \$2,963.35; interest pursuant to B below; attorneys' fees pursuant to C below; plus the return of Applicant's \$40.00 filing fee pursuant to D below.

This case is subject to the provisions as to attorney fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Interest is awarded from the date of filing, December 5, 2022, at the rate of two percent per month, not compounded, on a pro-rata basis.

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
	Hunt City Chiropractic, LLP	11/02/16 - 08/23/17	\$2,986.47	Awarded: \$2,963.35
Total			\$2,986.47	Awarded: \$2,963.35

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/05/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of filing, December 5, 2022, at the rate of two percent per month, not compounded, on a pro-rata basis.

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 fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-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 Suffolk

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

12/31/2023  
(Dated)

Regina Anzalone Kurz

### **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:**  
5dbeab2898112c4728d0e01e82ef1abb

### Electronically Signed

Your name: Regina Anzalone Kurz  
Signed on: 12/31/2023