

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Apple Chiropractic of NY, PC
(Applicant)

- and -

St. Paul Travelers Insurance Co.
(Respondent)

AAA Case No. 17-23-1329-3410

Applicant's File No. n/a

Insurer's Claim File No. IIK9323

NAIC No. 19070

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person (SC)

1. Hearing(s) held on 07/22/2024
Declared closed by the arbitrator on 07/22/2024

April Mittelman from April Mittleman Esq. participated virtually for the Applicant

Amber Brogdon-Johnson from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$584.18**, 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

Applicant seeks reimbursement for lower EMG/NCV studies performed on 3/16/22 following a motor vehicle accident on 2/1/22. The charges were timely denied based on a peer review by Bonnie Corey, DC dated 4/22/22 based on lack of medical necessity. A rebuttal is submitted by Anthony Riotto, DC. The EIP was a 22 year old restrained male driver.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for lower EMG/NCV studies performed on 3/16/22 following a motor vehicle accident on 2/1/22. The charges were timely denied based on a peer review by Bonnie Corey, DC dated 4/22/22 based on lack of medical necessity.

The peer reviewed the pertinent records and states the EIP was a 22 year old restrained male driver. On 3/16/22 when the testing was performed an exam documented low back pain radiating to the lower extremities and hip pain. Neurologic findings were normal reflexes. L1-L5 was circled indicating abnormal nerves but without explanation of the nature of the abnormality. No muscle weakness was noted. There was no diagnostic dilemma. The diagnosis was low back pain, radiculopathy and myalgia.

These were musculoskeletal injuries which were being treated appropriately with conservative treatments and the subject testing was unnecessary for diagnosis or treatment purposes.

A diagnosis of nerve root compression, radiculopathy and radiculitis can be made clinically and does not depend on these studies from a chiropractic standpoint.

Conservative treatment was not failing and there were no progressive neurologic deficits or findings. There was no unexplained etiology.

Multiple authorities for these statements are cited by the peer.

I find the peer sufficient factually and medically to demonstrate lack of medical necessity for the subject testing for this patient shifting the burden to applicant.

A rebuttal is submitted by Anthony Riotto, DC who states the testing was necessary based on decreased reflexes as well as abnormal myotomes throughout the lumbar spine. Complaints were also ongoing for six weeks.

The testing was necessary to resolve a differential diagnosis based on abnormalities in the upper and lower extremities citing tenderness, spasm, decreased ranges of motion as well.

The testing was necessary to rule out radiculopathy and localize the level of nerve root compression.

A 2/2/22 medical exam does not even document low back pain and all neurologic findings including motor strength, reflexes and sensation were normal and intact. Cervical sprains and strains were diagnosed.

I find the rebuttal insufficient to rebut the peer or establish medical necessity. The rebuttal does not describe why reflexes which were symmetric and +2/2 as noted by the peer were abnormal.

The rebuttal does not describe "myotomal abnormalities" specifically as noted by the peer as the finding was diffuse and throughout the lumbar spine.

The rebuttal does not indicate what if any differential diagnoses were suspected and given that this was a chiropractic exam, whether a neurologic consultation was recommended.

Finally, the rebuttal does not describe a failure of conservative treatment or that there was no response to treatments nor were there any progressive deficits.

MRI reported a bulging disc at L5-S1 which is not mentioned.

I find the peer more consistent with the evidence that the studies were unnecessary for diagnosis or treatment purposes and the rebuttal insufficient to establish medical necessity.

The charges are 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 FL
SS :
County of Osceola

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

07/24/2024
(Dated)

Camille Nieves

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:
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Electronically Signed

Your name: Camille Nieves
Signed on: 07/24/2024