

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PDA NY Chiropractic, P.C.
(Applicant)

- and -

Stillwater Property and Casualty Insurance
Company f/k/a Tri-State Consumer
Insurance Company
(Respondent)

AAA Case No.	17-24-1340-7560
Applicant's File No.	GTLPDA030424.004
Insurer's Claim File No.	PA0001053300
NAIC No.	25180

ARBITRATION AWARD

I, Melissa Melis, 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: patient

1. Hearing(s) held on 07/24/2024
Declared closed by the arbitrator on 07/24/2024

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

Tara Gutman, Esq. from Stillwater Property and Casualty Insurance Company f/k/a Tri-State Consumer Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,654.20**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount of the claim was reduced to \$1482.30 based on the New York State Workers Compensation fee schedule.

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

3. Summary of Issues in Dispute

The patient, a 55 year old male was involved in an automobile collision on November 23, 2022. The Applicant provided the patient with chiropractic care. The claim of

payment for the services provided from the period of May 1, 2023 through August 9, 2023 was denied based on the results of the independent medical examination (hereinafter referred to as "IME") by Chiropractor Glenn Berman dated April 20, 2023. The issue is whether or not the Applicant is entitled to No-fault benefits.

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking reimbursement for the chiropractic care provided to the patient from the period of May 1, 2023 through August 9, 2023. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

The Applicant submitted bills to the Respondent for payment. The claim of payment was denied based on the IME by Chiropractor Glenn Berman conducted on April 20, 2023. Chiropractor Berman reviewed some medical records and examined the patient. On the date of the examination, the patient complained of radiating neck pain to the left arm, mid back pain, lower back pain and numbness in the patient's left arm and leg. The examination revealed no spasms or tenderness, no sensory abnormalities, normal deep tendon reflexes, no trigger points, normal range of motion of the cervical and lumbar spine and negative orthopedic tests. The diagnosis was resolved strains of the cervical and lumbar spine and normal exam of the thoracic spine. Chiropractor Berman stated that the patient was not in need of any further chiropractic care, massage therapy, aqua therapy, diagnostic testing, physical therapy, medical supplies, transportation, household help, prescription medication or surgery.

I find based on the evidence that the Respondent has failed to meet its burden of establishing that the chiropractic care provided to the patient from the period of May 1, 2023 through August 9, 2023 was not medically necessary. The denial was based on the results of the IME performed by Chiropractor Berman on April 20, 2023. However, Chiropractor Berman reviewed medical records and testing which revealed radiculopathy at left C5-6 and right L4-5 but he did not mention these results in his diagnosis. The patient complained of radiating pains and numbness at the time of the examination. The patient was objectively diagnosed with radiculopathy. Yet, Chiropractor Berman stated that the patient's condition

was strains which were fully resolved. The patient's condition was more than just mere strains. Chiropractor Berman was aware of the severity of the patient's condition. The patient also underwent trigger point injections just a few months prior to the IME. Chiropractor Berman did not address the totality of the patient's injuries and condition when coming to his conclusion that the patient did not require any further treatment. As such, I find based on the evidence that the denial of payment for the chiropractic care provided to the patient from the period of May 1n 2023 through August 9, 2023 was not proper or substantiated.

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	Amount Amended	Status
	PDA NY Chiropractic, P.C.	05/01/23 - 05/16/23	\$427.50	\$255.60	Awarded: \$255.60
	PDA NY Chiropractic, P.C.	05/22/23 - 05/30/23	\$142.50	\$142.50	Awarded: \$142.50
	PDA NY Chiropractic, P.C.	06/01/23 - 06/13/23	\$285.00	\$285.00	Awarded: \$285.00
	PDA NY Chiropractic, P.C.	06/21/23 - 06/27/23	\$285.00	\$285.00	Awarded: \$285.00
	PDA NY Chiropractic, P.C.	07/05/23 - 07/13/23	\$285.00	\$285.00	Awarded: \$285.00
	PDA NY Chiropractic, P.C.	07/19/23 - 07/27/23	\$171.90	\$171.90	Awarded: \$171.90
	PDA NY Chiropractic, P.C.	08/09/23 - 08/09/23	\$57.30	\$57.30	Awarded: \$57.30
Total			\$1,654.20		Awarded: \$1,482.30

B. The insurer shall also compute and pay the applicant interest set forth below. 03/18/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

11 NYCRR 65-3.9(a) provides, in pertinent part, "All overdue mandatory and additional personal injury protection benefits due an applicant or assignee shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30 day month..." Since this claim was timely denied but the action was not instituted until 30 days after the date of the denial, interest is due at a rate of 2% per month, simple from the date after the date of filing of this arbitration until the date of payment of this award.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d) which states: "For all other disputes subject to arbitration or court proceedings, subject to the provisions of subdivision (a) of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360..."

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

08/01/2024

(Dated)

Melissa Melis

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:
a0299e8c3c1a7495e4db273ab43888e4

Electronically Signed

Your name: Melissa Melis
Signed on: 08/01/2024