

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Chiropractic of Pelham Bay, P.C. (Applicant)	AAA Case No.	17-23-1316-4641
- and -	Applicant's File No.	M05052
	Insurer's Claim File No.	IIK6308
St. Paul Travelers Insurance Co. (Respondent)	NAIC No.	19062

ARBITRATION AWARD

I, Charles Blattberg, 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

1. Hearing(s) held on 07/03/2024
Declared closed by the arbitrator on 07/19/2024

Ashley Andrews-Santillo, Esq. from Munawar Law Firm, PLLC participated virtually for the Applicant

Sheridan Chu, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,587.44**, 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

The claimant was the 81-year-old female restrained driver of a motor vehicle that was involved in an accident on 9/27/21. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue are chiropractic services provided by Applicant 4/27/22-7/21/22. Respondent timely denied reimbursement based on the results of a 4/8/22 independent chiropractic evaluation (IME) conducted by John Iozzio, D.C.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was the 81-year-old female restrained driver of a motor vehicle that was involved in an accident on 9/27/21. The claimant reportedly injured her neck, right shoulder, upper back, lower back and left knee. There was no reported loss of consciousness. There were no reported lacerations or fractures. Following the accident the claimant was transported to Montefiore Hospital of New Rochelle where she was evaluated, treated, and released. On 9/29/21 the claimant presented to Hal Rosenfeld, D.C. of Advanced Chiropractic of Pelham Bay, PC (Applicant) with complaints of neck pain, upper back pain, rib pain and low back pain. Cervical range of motion was flexion 30/50°, extension 40/60°, RLF 28/45°, LLF 42/45°, RROT 70/80° and LROT 52/80°. Lumbar range of motion was flexion 38/60°, extension 10/25°, RLF 8/25° and LLF 10/25°. There was tenderness on palpation. Positive orthopedic tests were SLR, Yeoman, Shoulder Depressor, Kemp's and Compression. There was decreased muscle strength noted 4/5. The claimant was initiated on chiropractic treatment. On 10/27/21 the claimant presented to Randall Ehrlich, M.D. with complaints of pain centered at the right shoulder anterolateral acromion, anterior GHJ and acromioclavicular joint with discomfort extending from the lateral acromial margin down the deltoid in the epaulet distribution; cervical spine pain with numbness and paresthesias of the involved upper extremity; and persistent medial joint line pain left knee with cracking, popping, and several episodes of buckling. Pain was rated 9/10 (where 0 is no pain and 10 is the worst pain). Report about lumbar spine pain was ambiguous. Right shoulder examination revealed splinting and guarding with trace crepitus through passive shoulder circumduction; and tenderness to palpation at the anterolateral acromion, anterior GHJ and lateral acromial margin. Active range of motion was: 140/180°, external rotation to 50/70°, internal rotation to L4 (normal to T8) and active abduction to 120/150°. The claimant had 4+/5 motor strength to forward elevation, 5-/5 to internal rotation and external rotation. Positive orthopedic tests were Neer, Hawkins, Speed's test, Yergason's test and Cross-arm adduction. Motor and sensory function of the median, radial, ulnar, musculocutaneous, and axillary nerves was grossly intact and symmetric. The claimant had palpable radial pulses which were bilaterally symmetric. Left knee examination revealed a 1+ effusion with symmetric varus/valgus morphology. There was positive evidence of splinting and guarding. Active range of motion was of 5-100/0-140°. Strength measured 5-/5 in extension and 5-/5 in flexion. The claimant had marked tenderness to palpation at the medial joint line and peripatellar area. Positive orthopedic tests were McMurray, Steinman, and Bounce test. There was 1+ patellofemoral crepitus with a positive patellofemoral grind test. The claimant otherwise had normal patellar

mobility without apprehension. Motor/sensory function of the tibial, deep peroneal and superficial peroneal nerves as well as sensory function of the saphenous and sural nerves was grossly intact and symmetric. She had palpable distal pulses which were bilaterally symmetric. The cervical spine or lumbar spine examinations were documented. Dr. Ehrlich prescribed physical therapy, MRIs (right shoulder and left knee) and a hinged knee brace. On 11/22/21 Seth Gartenlaub, D.C. conducted upper and lower extremities EMG/NCV testing that suggested evidence consistent with bilateral carpal tunnel syndrome, right C5-C6 radiculopathy and right L5-S1 radiculopathy. On 12/1/21 the claimant presented to John S. Vlattas, M.D. of Physicians Medical Rehabilitation Associates, PLLC with complaints of pain in the neck, right shoulder, upper back, lower back and left knee. Pain was rated 9/10. Examination revealed "cervical spine reveals mild tenderness and spasm with trigger points noted. Flexion 30°, extension 30°, left lateral bending 20°, right lateral bending 30°, right and left rotation 45°. Spurling's maneuver causes pain to the shoulders. Thoracic spine reveals interscapular tenderness with increased kyphosis. Lumbar spine reveals left shift, right-sided spasm greater than left. Flexion 40°, extension 10°, right lateral bending 10°, left lateral bending 20°. Straight leg raising was positive on the left at 40°, right at 60°. Examination of the right shoulder revealed limited motion with abduction 120°, anterior flexion 145°, external rotation 45°, internal rotation thumb to buttock, with weakness graded at 4-/5 with Neer and Hawkins impingement signs mildly positive. There is tenderness of the posterior deltoid. Left knee reveals marked tenderness of the medial femoral condyle, along the adductor tendons to the pes anserine bursa, mild effusion. Extension lags 5°, flexion to 90°, weakness at 4/5 in knee extension and flexion. Neurologically, biceps, triceps, brachioradialis, patella and Achilles reflexes 1+. Decreased sensation in the left L4 dermatome." Paravertebral injections, trigger point injections, and intraspinal injections were discussed. On 12/8/21 Dr. Ehrlich conducted a follow-up examination that was substantially similar to that of 10/27/21. Dr. Ehrlich noted "MRI of the right shoulder dated 12/2/2021 reveals evidence of a previous rotator cuff repair. There is now a complete rotator cuff re-tear with complete retraction of both tendons proximal to the superior humeral head. There is also a tear of the anterior superior distal insertion of the subscapularis tendon with a tear of the teres minor. There is a SLAP tear. There is a tear of the biceps labral complex and tear of the long head of the biceps tendon. Tear of the anterior labrum extending superiorly and inferiorly. Tear of the inferior labrum with an axillary bursal effusion. Joint and bursal effusion." Dr. Ehrlich also noted "MRI of the left knee dated 12/2/2021 reveals long complex tear of the posterior horn and body of the medial meniscus extending into the anterior horn. The tear extends to the root attachment of the meniscus. There is extrusion of the meniscus into the meniscomfemoral space with associated partial tear of the MCL. Partial tear of the ACL. 2.2cm osteochondral defect in the posterior aspect of the medial femoral condyle with extensive associated tissue edema. Joint effusion." On 4/8/22 the claimant was required to present to John Iozzio, D.C. for an independent chiropractic evaluation (IME) that was purportedly negative and Respondent determined "CHIROPRACTIC TREATMENT DENIED AS OF 04/22/2022 BASED ON INDEPENDENT MEDICAL EXAM FINDINGS BY DR. JOHN IOZZIO, D.C., L.AC." Also on 4/8/22 the claimant presented to Dr. Rosenfeld for a follow-up examination with complaints of neck pain, upper back pain and low back pain. Cervical range of motion was flexion 40/50°, extension 44/60°, RLF 37/45°, LLF 41/45°, RROT 48/80° and LROT 54/80°. Lumbar range of motion was flexion 52/60°, extension 10/25°, RLF 13/25° and LLF 14/25°.

There was tenderness on palpation. Positive orthopedic tests were Yeoman, Shoulder Depressor, Kemp's and Compression. There was decreased muscle strength noted 4/5. At issue are chiropractic services provided by Applicant 4/27/22-7/21/22.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op. 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op. 52116 (App. Term 1st Dept. 2006). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/peer doctor with his own facts. *Park Slope Medical and Surgical Supply, Inc. v. Travelers*, 37 Misc.3d 19 (2012).

An IME report asserting that no further treatment is not medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mutual Fire Ins. Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008).

Respondent timely denied the chiropractic services at issue based on the 4/8/22 independent chiropractic evaluation (IME) conducted by John Iozzio, D.C. After reviewing the claimant's history, treatment, and medical records, Dr. Iozzio conducts what appears to be a thorough examination. Dr. Iozzio documents the claimant's then current complaints as pain in the neck, low back and right shoulder. Cervical examination revealed no paraspinal and trapezial tenderness were noted on palpation. No spasm was detected. Cervical compression testing was negative. Spurling's test was negative. Soto-Hall, foraminal compression and Jackson compression were negative. Sensation in the upper extremities was intact to light touch and pin prick. Upper extremity reflexes were 2+ bilaterally and symmetric. Motor strength in the upper extremities was 5/5. Range of motion testing was pain free: flexion 50/50°, extension 60/60°, RLF 45/45°, LLF 45/45°, RROT 80/80° and LROT 80/80°. Thoracic examination revealed no spasm or tenderness to palpation over the thoracic paraspinal muscles. Range of motion testing was normal during flexion, extension, lateral bending bilaterally or in bilateral rotation. Lumbar examination revealed no spasm was detected on palpation of the lumbar paraspinal muscles. There was no tenderness over the paraspinal muscles. Lower extremity motor strength was 5/5. Sensation in the lower extremities was normal to light touch and pin prick. Reflexes in the lower extremities were 2+ and symmetric. Range of motion testing was pain free: flexion 60/60°, extension 25/25°, RLF 25/25°, LLF 25/25° RROT 30/30° and LROT 30/30°. Straight leg raise testing was negative bilaterally. The claimant was able to heel/toe walk. Minor's sign was absent. Ely's test was negative. Kemp's test was negative. Nachlas' test was negative. Fabere-Patrick was negative. Dr. Iozzio's diagnosis was resolved cervical

and lumbar sprains. Dr. Iozzio concludes "No chiropractic or massage therapy is indicated. The claimant has reached pre-accident status. There are no indications for follow up visits, CMT, diagnostic testing or durable medical equipment."

If the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. See, *West Tremont Medical Diagnostic P.C., v. Geico*, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006).

Applicant submitted a 5/14/24 IME rebuttal by Hal Rosenfeld, D.C. who asserts "I have reviewed the IME of Dr. Iozzio 4/8/22, and do not believe it is sufficient to deny the medical necessity for further chiropractic treatment. On 4/8/22, the patient presented for a follow-up examination. This was the same day as the IME. She complained of constant Upper back pain and neck pain that radiated to the right shoulder pain. There was tenderness on palpation. Specifically, Positive testing included, a positive Yeoman, Shoulder Depressor, Kemps and Compression. There was decreased neurological findings in both the upper and lower extremities including, strength, reflexes and sensation. There was reduced range of motion in both the cervical and lumbar spine. There was decreased sensation in both the upper and lower extremities. Please see my full medical chart that shows the patient's continued positive findings that necessitated the need for further care. If the IME took place after my examination on 4/8/22 the manipulation may have temporarily masked the patient's injuries. Please see my further follow-up examinations and treatment notes that demonstrate the need for further treatment."

I find that the chiropractic records and the 5/14/24 IME rebuttal by Hal Rosenfeld, D.C. relied on by Applicant show consistent complaints of pain with positive findings thereby warranting additional treatment. I am persuaded that the contemporaneous chiropractic records indicate the claimant was benefiting from the treatment at issue. I find Applicant has successfully rebutted the findings and recommendations of Respondent's IME report and established the need for the chiropractic treatment at issue that was performed beyond the cut-off date. Accordingly, Applicant is awarded \$2,587.44.

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
	Advanced Chiropractic of Pelham Bay, P.C.	04/27/22 - 04/29/22	\$144.96	Awarded: \$144.96
	Advanced Chiropractic of Pelham Bay, P.C.	04/29/22 - 05/03/22	\$196.53	Awarded: \$196.53
	Advanced Chiropractic of Pelham Bay, P.C.	05/06/22 - 05/11/22	\$197.01	Awarded: \$197.01
	Advanced Chiropractic of Pelham Bay, P.C.	05/11/22 - 05/13/22	\$144.48	Awarded: \$144.48
	Advanced Chiropractic of Pelham Bay, P.C.	05/18/22 - 05/19/22	\$196.53	Awarded: \$196.53
	Advanced Chiropractic of Pelham Bay, P.C.	05/19/22 - 05/25/22	\$144.96	Awarded: \$144.96
	Advanced Chiropractic of Pelham Bay, P.C.	05/27/22 - 06/01/22	\$196.53	Awarded: \$196.53

	Advanced Chiropractic of Pelham Bay, P.C.	06/01/22 - 06/03/22	\$144.96	Awarded: \$144.96
	Advanced Chiropractic of Pelham Bay, P.C.	06/08/22 - 06/10/22	\$144.48	Awarded: \$144.48
	Advanced Chiropractic of Pelham Bay, P.C.	06/10/22 - 06/15/22	\$197.01	Awarded: \$197.01
	Advanced Chiropractic of Pelham Bay, P.C.	06/17/22 - 06/22/22	\$144.48	Awarded: \$144.48
	Advanced Chiropractic of Pelham Bay, P.C.	06/22/22 - 06/24/22	\$197.01	Awarded: \$197.01
	Advanced Chiropractic of Pelham Bay, P.C.	06/29/22 - 07/06/22	\$144.96	Awarded: \$144.96
	Advanced Chiropractic of Pelham Bay, P.C.	07/06/22 - 07/14/22	\$196.53	Awarded: \$196.53
	Advanced Chiropractic of Pelham Bay, P.C.	07/15/22 - 07/21/22	\$197.01	Awarded: \$197.01
Total			\$2,587.44	Awarded: \$2,587.44

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/14/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 9/14/23 (the date that arbitration was requested) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . 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 for 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 Nassau

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

08/02/2024
(Dated)

Charles Blattberg

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:
ee80f8413fd6c5323ad4ae06fa66155f

Electronically Signed

Your name: Charles Blattberg
Signed on: 08/02/2024