

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Port Jeff Station Chiropractic
(Applicant)

- and -

Travelers Personal Insurance Company
(Respondent)

AAA Case No. 17-24-1333-4876

Applicant's File No. 3166054

Insurer's Claim File No. 272 PP
IWN1832 002

NAIC No. 38130

ARBITRATION AWARD

I, Michelle Murphy-Louden, 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: EIP

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

Erin O'Neill, Esq. from Israel Purdy, LLP participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$457.63**, 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 35 year old EIP was reportedly involved in a motor vehicle accident on June 10, 2023, as a driver.

The issue presented is whether Applicant is entitled to reimbursement for treatment rendered from October 31, 2023, to November 21, 2023, as the result of the June 10, 2023, motor vehicle accident.

Respondent denied reimbursement based upon an October 3, 2023, chiropractic independent medical examination (IME) performed by Robert Snitkoff, D.C.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

4. Findings, Conclusions, and Basis Therefor

The 35 year old EIP was reportedly involved in a motor vehicle accident on June 10, 2023, when the vehicle in which she was the restrained driver was T-boned on the passenger's side.

According to the records, the day after the accident the EIP presented as a walk-in to the emergency department of John T. Mather Memorial Hospital reportedly complaining of neck, back, left shoulder, and left arm pain. Following evaluation, the EIP was diagnosed with cervical strain and discharged.

On June 16, 2023, the EIP presented for initial chiropractic evaluation with Gregory Bonasera, D.C., reportedly complaining in relevant part of 9/10 cervical pain radiating to the left shoulder with left hand numbness and headache, 7/10 thoracic pain radiating to the bilateral scapulas, and 6/10 lumbar pain radiating to the left thigh. Following examination, Dr. Bonasera diagnosed the EIP with cervical, thoracic, and lumbar subluxation and recommended treatment 5 times per week.

On July 7, 2023, the EIP underwent cervical, thoracic, and lumbar MRI's. The cervical MRI was with the impression of straightening of the lordosis and C4-C5 and C5-C6 disc herniations flattening the thecal sac. The thoracic MRI was with the impression of mild dextroscoliosis. The lumbar MRI was with the impression of normal.

On July 18, 2023, the EIP underwent an upper extremity EMG/NCV study which was with the impression of left C5-C6 radiculitis.

On September 27, 2023, the EIP presented for treatment with Dr. Bonasera reportedly complaining of 4/10 cervical pain radiating to the left shoulder with left hand numbness and headache, 5/10 thoracic pain radiating to the bilateral scapulas, and 3/10 lumbar pain radiating to the left thigh. Objective findings documented were cervical, thoracic and lumbar tightness, C4, C5, T6, T7, L4 and L5 tenderness and subluxations, and cervical, thoracic and lumbar paraspinal trigger points.

On October 6, 2023, the EIP again presented for treatment with Dr. Bonasera reportedly complaining of 7/10 cervical pain radiating to the left shoulder with left hand numbness and headache, 4/10 thoracic pain radiating to the bilateral scapulas, and 4/10 lumbar pain radiating to the left thigh. Objective findings documented were cervical, thoracic and lumbar tightness, C4, C5, T6, T7, L4 and L5 tenderness and subluxations, and cervical, thoracic and lumbar paraspinal trigger points.

On October 31, 2023, the EIP was re-evaluated by Dr. Bonasera at which time she was reportedly complaining of 5/10 cervical pain radiating to the left shoulder with left hand numbness and headache, 5/10 thoracic pain radiating to the bilateral scapulas, and 4/10 lumbar pain radiating to the left thigh. Examination of the cervical spine reportedly revealed decreased range of motion in all planes with the exception of flexion which was normal, 5/5 muscle strength of the neck and upper extremities, decreased sensation at C6-C8 on the left, normal reflexes of the upper extremities, positive orthopedic tests, and C4 and C5 subluxations. Examination of the thoracic spine reportedly revealed decreased flexion, positive Schepelman's Sign, and T6 and T7 subluxations. Examination of the lumbar spine reportedly revealed decreased range of motion on flexion and right lateral bending, decreased sensation at L4 and S1 on the left, normal reflexes of the upper extremities, 5/5 muscle strength of the lower extremities, positive orthopedic tests, and L4 and L5 subluxations. Dr. Bonasera recommended continued treatment 3 times per week.

On November 21, 2023, the EIP presented for treatment with Dr. Bonasera reportedly complaining of 5/10 cervical pain radiating to the left shoulder with left hand numbness and headache, 4/10 thoracic pain radiating to the bilateral scapulas, and 4/10 lumbar pain radiating to the left thigh. Objective findings documented were cervical, thoracic

and lumbar tightness, C4, C5, T6, T7, L4 and L5 tenderness and subluxations, and cervical, thoracic and lumbar paraspinal trigger points.

IME

On October 3, 2023, the EIP underwent a chiropractic IME performed by Robert Snitkoff, D.C., at which time she was reportedly complaining of headaches, neck pain radiating to the back, shoulder and arm, mid back pain, low back pain radiating to the bilateral legs, and left shoulder pain. The EIP reported that she had undergone a left shoulder arthroscopy on July 31, 2023.

The findings of Dr. Snitkoff's examination are set forth in his report as follows:

EXAMINATION OF THE CERVICAL SPINE:

There are complaints of minimal tenderness to palpation over the cervical musculature. There are no complaints of tenderness to palpation over the trapezii. Ranges of motion of the cervical spine reveals flexion 50 degrees (50 degrees being normal), extension 60 degrees (60 degrees being normal), and rotation 80 degrees bilaterally (80 degrees being normal). Right lateral flexion is 45 degrees (45 degrees being normal) and left lateral flexion is 45 degrees (45 degrees being normal). No muscle spasm is noted on palpation of the cervical musculature.

Cervical Distraction testing, Soto Hall, Foraminal Compression and Jackson's Compression are negative. Deep tendon reflexes are 2+, equal and symmetrical. There is no evidence of sensory or neurovascular deficiency. Motor strength is 4/5 to the left shoulder due to surgery.

EXAMINATION OF THE THORACIC SPINE:

There is no paraspinal tenderness on palpation over the paraspinal muscles. There is no paraspinal spasm.

EXAMINATION OF THE LUMBOSACRAL SPINE:

There is minimal tenderness to palpation of the lumbosacral paraspinal muscles. There is no muscle spasm noted. There is no SI joint tenderness or instability. Range of motion of the lumbosacral spine is flexion to 60 degrees (60 degrees normal), extension to 25 degrees (25 degrees being normal), lateral bending to the right and left 25 degrees (25 degrees being normal), right rotation 30 degrees (30 degrees being normal) and left rotation 30 degrees (30 degrees being normal). Straight leg raise is negative bilaterally.

Minor's sign is absent. Ely's, Nachlas and Fabere-Patrick signs are negative bilaterally. Kemp's test is within normal limits. On neurological examination of the lower extremities, there is no evidence of reflex, sensory or neurovascular deficiency. Motor strength is 5/5 in the lower extremities.

Dr. Snitkoff diagnosed the EIP with resolved cervical spine, thoracic spine, and lumbosacral spine sprains/strains and opined that no medical necessity for chiropractic treatment.

Dr. Snitkoff's opinion, Respondent denied Applicant's claims.

ANALYSIS

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). . Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut., 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Snitkoff's IME sets forth a clear factual basis and a medical rationale for Respondent's denials of Applicant's claims for the treatment in dispute herein and as such I find that Respondent has established a lack of medical necessity for same. Therefore, the burden has shifted to Applicant to present its own evidence of medical necessity (*see Amato v. State Farm Ins. Co.*, 40 Misc. 3d 129(A), App. Term, 2nd Dept., 2013; *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc. 3d 131(A), App. Term, 2nd Dept., 2006).

Dr. Bonasera's treatment notes and October 31, 2023, re-evaluation report indicate a change in the EIP's condition post-IME. However, there are no subsequent re-evaluation reports in evidence showing that the positive examination findings documented by Dr. Bonasera on October 31, 2023, improved with the continued treatment, and Dr. Bonasera's daily treatment notes show no change in the EIP's complaints, pain levels, or objective findings. Therefore, I find that Applicant has failed to meet its shifted burden of establishing medical necessity for the treatment in dispute and as such Respondent's denials are upheld.

ACCORDINGLY, APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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 NY

SS :

County of Saratoga

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

08/06/2024

(Dated)

Michelle Murphy-Louden

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:
cec336512e1a6353feaf2dd1b94ebd6c

Electronically Signed

Your name: Michelle Murphy-Louden
Signed on: 08/06/2024