

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Christopher S. Whyte, DC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No.	17-24-1340-8741
Applicant's File No.	396756
Insurer's Claim File No.	0676399834 2JH
NAIC No.	29688

ARBITRATION AWARD

I, Eileen Casey, 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 07/18/2024
Declared closed by the arbitrator on 07/18/2024

Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$295.00**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

It was stipulated that Applicant established a prima facie case and Respondent issued a timely denial.

3. Summary of Issues in Dispute

The EIP (GMH aka GM), a then 27-year-old female, was the driver of a motor vehicle involved in an accident on July 7, 2022. The amount claimed is \$295.00 for chiropractic treatment provided from June 17, 2023 through June 26, 2023. Respondent denied

Applicant's claim based upon an April 18, 2023 IME by Dr. Robert Snitkoff, chiropractor. The issue is whether Respondent established a defense of lack of medical necessity based on the IME.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the arguments of counsel and after a review of the documents contained in the ADR Center maintained by the American Arbitration Association. The amount claimed is \$295.00 for chiropractic treatment provided from June 17, 2023 through June 26, 2023.

The evidence demonstrates that the EIP (GMH aka GM), a then 27-year-old female, was the driver of a motor vehicle involved in an accident on July 7, 2022.

The IME (Lack of Medical Necessity) Defense

Lack of medical necessity is a defense to an action to recover no-fault benefits, which an insurer may assert upon a timely denial, based either on a medical examination or a peer review report. *Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp.*, 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

Respondent denied Applicant's claim based upon an April 18, 2023 independent medical examination (IME) by Dr. Robert Snitkoff, chiropractor.

In his report, Dr. Snitkoff listed the records he reviewed and detailed the EIP's medical history. At the time of the IME, the EIP complained of pain in the mid back, low back, bilateral shoulders, and bilateral knees. Examination of the EIP's cervical, thoracic, and lumbar spine revealed no positive findings. Orthopedic testing was negative. Neurological examination of the upper and lower extremities revealed no sensory, reflex or muscle strength deficits. Dr. Snitkoff's impression was resolved cervical, thoracic, and lumbar spine sprains/strains. Dr. Snitkoff concluded that there was no need for further chiropractic treatment.

When Respondent has timely raised and established lack medical necessity, the burden of proof then shifts to the Applicant to establish that the disputed services were reasonable and medically necessary. If the insurer medical examination or peer review is not rebutted, the insurer is entitled to denial of the claim. *Khodadadi Radiology v. New York Central*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824, 2007 N.Y. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. 2007).

Applicant's Evidence

Applicant submitted chiropractic SOAP notes for DOS June 6, 2023 through June 30, 2023. The notes reported subjective complaints of pain and stiffness in the cervical,

thoracic, and lumbar spine. The notes also reported that the EIP demonstrated restricted range of motion and muscle spasms but did not detail the affected body parts or the specific degrees of ranges of motion.

Findings

Based on the foregoing, I find that Dr. Snitkoff's IME report was sufficient to establish that further chiropractic treatment was not medically necessary and to shift the burden to the Applicant to establish that the disputed services were reasonable and medically necessary. Dr. Snitkoff's examination did not reveal any positive findings and Dr. Snitkoff found that the EIP's injuries had resolved. There were no chiropractic evaluation reports close in time to the IME submitted and I find that Applicant's SOAP notes lacked sufficient details to rebut the IME or to establish the medical necessity for the chiropractic treatment in dispute. 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 Queens

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

08/17/2024
(Dated)

Eileen Casey

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:
9c808948ff4e6d49d3a7f2858eee823c

Electronically Signed

Your name: Eileen Casey
Signed on: 08/17/2024