

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PDA NY Chiropractic, P.C.
(Applicant)

- and -

The Standard Fire Insurance Company
(Respondent)

AAA Case No.	17-24-1343-0890
Applicant's File No.	GTLPDA030124.004
Insurer's Claim File No.	272 PP IPG8784 002
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Eylan Schulman, 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 08/05/2024
Declared closed by the arbitrator on 08/05/2024

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

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

2. The amount claimed in the Arbitration Request, **\$265.39**, 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

Whether chiropractic manipulations were medically necessary.

The EIP was a 34-year-old male who was involved in an automobile accident on January 17, 2023. This is a claim for reimbursement for chiropractic manipulations performed between August 2, 2023, and August 10, 2023.

Respondent denied the claims based on lack of medical necessity. Specifically, Respondent denied the claims based on the IME report of chiropractor/acupuncturist Ji Hoon Kim, D.C., L.Ac., dated June 19, 2023. Based on the findings in the examination, additional medical treatment was disallowed effective July 7, 2023.

4. Findings, Conclusions, and Basis Therefor

The findings herein are based on documentary evidence set forth in the ADR Center submitted by the parties prior to the date of hearing and oral argument at the hearing.

It is undisputed that Applicant established its *prima facie* case of entitlement to first-party no-fault benefits by demonstrating it submitted timely claims setting forth the fact and amount of loss sustained and payment for the claims has not been made.

The burden shifts to Respondent to set forth a clear factual basis and medical rationale for denying the claims. Respondent attempts to meet its burden to establish lack of medical necessity through the IME report of chiropractor/acupuncturist Ji Hoon Kim, D.C., L.Ac., dated June 19, 2023. The IME was negative in terms of positive, objective findings. There were no objective findings of spasms, and all ranges of motion were within normal limits (aside from the EIP's flexion of the lumbar spine, which was 70°, while 60° is normal). Dr. Kim diagnosed the EIP with resolved sprains/strains of the cervical and lumbar spine and noted that the thoracic spine had a clinically normal examination.

In rebuttal, Applicant cites to medical records demonstrating the EIP having persistent difficulties, substantiated by positive, objective findings, when the chiropractic manipulations at issue were performed.

After review of the medical records included on the ADR Center and consideration of the arguments advanced by counsel for both parties, assuming Respondent met its burden to establish lack of medical necessity for the chiropractic manipulations at issue, I find that Applicant met its burden in rebuttal. Based on the evidence, I am persuaded the EIP's difficulties were not resolved at the time of the IME cut-off or when the chiropractic manipulations occurred. Given the EIP's treating provider's recommendation for the EIP to undergo the chiropractic manipulations at issue, I defer to the treating provider's determination that chiropractic manipulations at issue were necessary for the EIP's rehabilitation following the accident.

Based on the foregoing, Applicant is awarded the claims, in the amount of \$265.39.

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
	PDA NY Chiropractic, P.C.	08/02/23 - 08/10/23	\$265.39	Awarded: \$265.39
Total			\$265.39	Awarded: \$265.39

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/05/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. (11 NYCRR 65-3.9(c)). The end date for the calculation of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. (11 NYCRR 65-3.9(a)).

C. Attorney's Fees

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

For cases filed prior to February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to a minimum of \$60 and a maximum of \$850. For cases filed on or after February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to no minimum and a maximum of \$1360. (11 NYCRR 65-4).

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

09/04/2024
(Dated)

Eylan Schulman

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:
51f4b7072860812a26c75b85b26ded82

Electronically Signed

Your name: Eylan Schulman
Signed on: 09/04/2024