

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Caring Hands Medical Care PC
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1343-7632

Applicant's File No. NF 4199

Insurer's Claim File No. 23-8134882

NAIC No. 24260

ARBITRATION AWARD

I, Paul Israelson, 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: injured person.

1. Hearing(s) held on 09/10/2024
Declared closed by the arbitrator on 09/10/2024

Michael Manfredi Esq. from The Pomares Law Group, PLLC participated virtually for the Applicant

Mr. Lance Faustin from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,356.72**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended its claim to \$914.92.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties agreed that, with the claim amended to \$914.92, the applicant's claim has been submitted in accordance with the fee schedule.

3. Summary of Issues in Dispute

The date of the subject automobile accident was September 19, 2023, involving the injured person, a 29-year-old female, the restrained driver of the automobile involved in the subject automobile accident.

The applicant made a claim in the amended amount of \$914.92 for the January 27, 2024 EMG NCV testing of the injured person's upper extremities.

The respondent denied the applicant's claim on the basis that the subject EMG NCV testing of the injured person's upper extremities was not medically necessary.

Was the subject EMG NCV testing of the injured person's upper extremities medically necessary?

4. Findings, Conclusions, and Basis Therefor

On September 10, 2024, the hearing for the within arbitration matter was conducted and closed.

At the hearing, the applicant did not raise any argument as to the timeliness of the respondent's denial of the applicant's claim.

MEDICAL NECESSITY DEFENSE:

As to the medical necessity for the subject EMG NCV testing of the injured person's upper extremities, "Medical necessity is presumed upon the timely submission of a no-fault claim (see All County Open MRI & Diagn. Radiology P.C. v. Travelers Ins. Co., 11 Misc.3d 131[A], 2006 N.Y. Slip Op 50318[U] [App Term, 9th & 10th Jud Dists 2006]). Thus, ordinarily it falls to the defense to establish that the billed-for services were not medically necessary.", Park Slope Medical and Surgical Supply, Inc. v. Progressive Ins. Co. 34 Misc.3d 154(A), 950 N.Y.S.2d 609 (App. Term, 2nd, 11th and 13th Dists. 2012). In this case there is no question of fact that the applicant timely submitted its proof of claim for the subject , and therefore, the applicant may apply this same presumption of medical necessity to that same treatment.

Further, "Any objection to a lack of medical necessity must be stated in a claim denial form, and must be "supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim" (Healing Hands Chiropractic, PC v. Nationwide Assur. Co., 5 Misc.3d 975, 976, 787 N.Y.S.2d 645 [Civ .Ct. N.Y. Co.2004, Kern, J.], also involving a claim for CPT compensation; see also, decisions following trial, Nir v.

Allstate Ins. Co., 7 Misc.3d 544, 796 N.Y.S.2d 857 [Civ.Ct. Kings Co.2005, Matos, J.], and CityWide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 [Civ. Ct. Kings Co.2004, Battaglia, J.]). At all stages, the insurer bears the burden of proof on a medical necessity defense (see Healing Hands Chiropractic, PC v. Nationwide Assur. Co., supra; see also Lumbermens Mut. Cas Co. v. Inwood Hill Medical, P.C., 8 Misc.3d 10014(A), 2005 WL 1662041 *5, 2005 N.Y. Slip Op. 51101[U] [Sup.Ct. N.Y. Co.2005, Ramos, J].

The respondent provided the January 5, 2024 independent orthopedic examination report by Dr. Dorothy Scarpinato M.D. in support of the respondent's argument that the subject EMG NCV testing of the injured person's upper extremities was not medically necessary.

Dr. Scarpinato examined the injured person's cervical spine, thoracolumbar spine, both shoulders, both wrists, both hands, both elbows, both hips, both knees, both ankles and both feet, and concluded that all injury resulting from the subject automobile accident had resolved (except for "subjective" complaints of tenderness in the cervical spine, thoracolumbar spine and right knee) and that the injured person was no longer in need of any further orthopedic treatment, physical therapy, prescription medication, extracorporeal shockwave therapy, office visits, massage therapy, surgery, injections, diagnostic testing and durable medical equipment. Dr. Scarpinato noted that the injured person, a 29-year-old female, had been employed at the time of the subject automobile accident, and was not working at the time of her independent orthopedic examination. Additionally, Dr. Scarpinato noted that, at the time of her independent orthopedic examination, the injured person complained of pain in her neck, back and knees, however, Dr. Scarpinato also noted that the injured person ambulated with a normal gait, was able to walk on her heels and toes and squat, and there were no spasms, tenderness, instability or restriction in range of motion in the areas examined by Dr. Scarpinato. Consequently, pursuant to the above cited authorities, Dr. Scarpinato's January 5, 2024 independent orthopedic examination report sustained the respondent's burden of demonstrating that the subject EMG NCV testing of the injured person's upper extremities was not medically necessary.

The record contains the following objective test results:

1. The November 19, 2023 MRI of the injured person's cervical spine indicating disc herniations at the C3-4, C5-6 and C6-7 levels impressing upon the ventral thecal sac.
2. The November 19, 2023 MRI of the injured person's lumbar spine indicating disc herniations at the L4-5 and L5-S1 levels.

3. The December 2, 2023 MRI of the injured person's left knee indicating a tear of the posterior horn of the medial meniscus.

4. The December 2, 2023 MRI of the injured person's right shoulder indicating an anteriorinferior labral tear.

5. The December 2, 2023 MRI of the injured person's left shoulder indicating an anteriorinferior labral tear.

6. The January 27, 2024 EMG NCV test of the injured person's upper extremities indicating evidence of bilateral C-4 radiculopathies.

The applicant supplied the March 28, 2024 IME rebuttal by Dr. Scott Roteman M.D. in support of the applicant's claim.

Dr. Roteman stated that the January 24, 2024 physical examination of the injured person indicated complaints of pain in the neck, back, both shoulders and both knees with restricted range of motion and positive orthopedic test results in the cervical spine, lumbar spine, both shoulders and both knees. As well, Dr. Roteman stated that, on January 11, 2024, the injured person attended an independent chiropractic examination by Dr. Bonnie Corey DC, who diagnosed cervical and lumbar sprain/strains that had been "resolving" and recommended further treatment for the injured person. Consequently, Dr. Roteman's IME rebuttal has rebutted the conclusions drawn by Dr. Scarpinato as expressed in her January 5, 2024 independent orthopedic examination report.

I have reviewed and considered all other arguments, contentions and evidence from both the applicant and the respondent, and find them to be without merit.

In accordance with the foregoing, the applicant's claim in the amended amount of \$914.92 for the January 27, 2024 EMG NCV testing of the injured person's upper extremities is awarded.

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 |
|---------|------------------------------|---------------------|--------------|----------------|-------------------|
| | Caring Hands Medical Care PC | 01/27/24 - 01/27/24 | \$1,356.72 | \$914.92 | Awarded: \$914.92 |
| Total | | | \$1,356.72 | | Awarded: \$914.92 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/11/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest will run from the filing date to the date of payment.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, the respondent shall pay the applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (as existing on the filing date of this arbitration), subject to a maximum fee of \$1,360.00.

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

09/10/2024

(Dated)

Paul Israelson

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:
09bbbd69fc8837d25aeab69ce7b4a542

Electronically Signed

Your name: Paul Israelson
Signed on: 09/10/2024