American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Van Siclen Chiropractic PC (Applicant)	AAA Case No.	17-24-1338-2296
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	0697734598 VCB
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (NCB)

1. Hearing(s) held on 09/05/2024
   Declared closed by the arbitrator on 09/05/2024

   Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

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

2. The amount claimed in the Arbitration Request, **$543.61**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulated that there are no fee schedule disputes.

3. Summary of Issues in Dispute

   EIP (NCB), is a 14-year-old female, who was involved in a motor vehicle accident on December 29, 2022. Following the accident, EIP sought medical treatment. In dispute are chiropractic services provided by Applicant on dates of service 7/20/23-1/8/24.

Respondent's denials of Applicant's reimbursement claims are based on an independent medical examination ("IME") conducted by Robert Snitkoff, D.C. on June 13, 2023.

The issue presented: Whether Applicant is entitled to no-fault reimbursement for health services denied based on an IME?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

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It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no-fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). I find Applicant establishes a *prima facie* case of entitlement to No-Fault compensation for its claim. The burden then shifts to Respondent to prove that the subject bills were properly denied. I find Respondent's denials are timely.

Preliminary, I note the Assignor in this case is a minor. CPLR Section 1209 provides, in pertinent part, that "(a) controversy involving an infant…shall not be submitted to arbitration except pursuant to a court order made upon application of the representative of such infant…" Case law has interpreted the language of the statute to limit applicability only where the infant is actually a party to the action. See, e.g., Schneider v. Schneider, 24 A.D.2d 768. 264 N.Y.S.2d 9 (2nd Dept. 1965) aff'd 17 N.Y.2d 123 (1966).

The Court in NY Med v. Government Employees Ins. Co., Index No. 70058/2015 (Greco, J, Sup Ct. Queen Co. 2015) vacated a Master Arbitrator's award upholding a lower arbitrator's dismissal without prejudice where "the applicant failed to obtain a court order pursuant to CPLR Section 1209." Since "CPLR Section 1209 only applies when the infant is a party to the action, and since (the injured person) had assigned her benefits (and) was no longer a party," the Court determined that "the decision to dismiss was arbitrary, capricious, irrational and contrary to established law." I find that there is no legal impediment to arbitrating the instant claim. See also, Matter of Fast Care Med. Diagnostics v. Geico, 161 A.D.3d 1149 (2018). Therefore, in this arbitrator's opinion, the hearing may proceed.

Respondent's denials of Applicant's reimbursement claims are based on an independent medical examination ("IME") conducted by Robert Snitkoff, D.C. on June 13, 2023.

Medical Necessity

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D. 3d 13 (2d Dep't. 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't. 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d Dep't. 2008).

In support of its medical necessity defense, Respondent relies upon the IME by Robert Snitkoff, D.C., conducted on June 13, 2023. The IME resulted in the termination of all chiropractic and related health benefits effective July 12, 2023. The examination of EIP's cervical, thoracic, and lumbar spine revealed no tenderness, no muscle spasm, and no restrictions in ranges of motion. On neurological examination, the upper and lower extremities revealed no motor or sensory loss. Deep tendon reflexes were normal, and there was no atrophy. Multiple orthopedic tests were reportedly negative. Dr. Snitkoff diagnosis EIP with resolved sprains/strains of the cervical and lumbar spine. Dr. Snitkoff concludes that there is no need for further chiropractic treatment.

I find that the results of this examination presented a medical rationale as to why further chiropractic benefits were terminated. Based upon the foregoing, Respondent has set forth a cogent medical rationale in support of

its defense. Since Respondent has factually demonstrated the services rendered were not medically necessary, the burden shifts to Applicant who bears the ultimate burden of persuasion.

For Applicant to prove that the disputed treatment was medically necessary, it must demonstrate that "the treatment, procedure, or service (was) ordered by a qualified physician...based on an objectively reasonable belief that it will assist in the patient's diagnosis and treatment and cannot be reasonably dispensed with". Nir v. Progressive Insurance, NYLJ, April 14, 2005, p.19, col. 1 (Civ Ct Kings County, J. Nadelson). Moreover, "(s)uch treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence, and must be reasonable in light of the subjective and objective evidence of the patient's complaints." Id.

To refute the IME findings, Applicant relies on a rebuttal by Dr. Leonid Shapiro, dated 7/31/24, and submitted medical records, including progress notes and re-evaluations conducted on 5/17/23 and 11/7/23.

The re-evaluations held prior to and post-IME, reveal EIP with continuing complaints of sharp pain in the neck, and mid and low back. The re-evaluation of 5/17/23 reveals EIP with low back pain that radiates to the left buttock. Restrictions in ranges of motion are reported in the cervical and lumbar spine. Multiple orthopedic tests are positive, including foraminal compression, Jackson compression, maximum cervical compression, cervical distraction, Kemp's maneuver, Lasegue's/straight leg raise, Ely's, Nachlas and Gaenslen's. Continued chiropractic treatment is recommended three (3) times per week. The re-evaluation of 11/7/23 reveals EIP with complaints of lesser pain in the cervical and low back. Restrictions in ranges of motion continue for the cervical and lumbar spine. The following orthopedic tests continue to be positive in the cervical spine: foraminal compression, Jackson compression, and maximum cervical compression. The following orthopedic tests continue to be positive in the lumbar spine: Kemp's maneuver and Lasegue's/straight leg raise. Continued chiropractic treatment is recommended two (2) times per week. In the rebuttal of 7/31/24, Dr. Shapiro details EIP's history, and positive findings upon chiropractic examinations conducted on 1/16/23, 5/17/23, and 11/7/23. A lumbar spine MRI conducted on 2/13/23 revealed EIP, 14 years old, with multiple bulging discs. Based on a review of the medical records, Dr. Shapiro avers that although EIP was responding to treatment it is evident that her injuries were certainly not resolved as of the effective cut-off date of benefits.

After review of the medical records included on the ADR Center and consideration of the arguments advanced by representatives for both parties, I find that Applicant has sustained its burden of proof, and rebutted the lack of medical necessity for further chiropractic treatment established by Respondent. I am persuaded by EIP's contemporaneous medical records that EIP required continued chiropractic treatment post-IME cutoff, based upon objective findings, along with subjective findings of persistent pain.

Accordingly, based on EIP's continued complaints and positive findings upon examinations, I find that the chiropractic health services provided on 7/20/23-1/8/24, to be medically necessary.

Based on the foregoing, for dates of service 7/20/23-1/8/24, Applicant is awarded the amount of $543.61.

This decision is in full disposition of all claims for no-fault benefits presently before this arbitrator.

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
	Van Siclen Chiropractic PC	**01/08/24 - 01/08/24**	**$57.30**	**Awarded: $57.30**
	Van Siclen Chiropractic PC	**07/20/23 - 07/20/23**	**$72.30**	**Awarded: $72.30**
	Van Siclen Chiropractic PC	**07/31/23 - 08/09/23**	**$117.28**	**Awarded: $117.28**
	Van Siclen Chiropractic PC	**09/19/23 - 09/19/23**	**$72.30**	**Awarded: $72.30**
	Van Siclen Chiropractic PC	**10/05/23 - 10/05/23**	**$72.30**	**Awarded: $72.30**
	Van Siclen Chiropractic PC	**11/07/23 - 11/07/23**	**$94.83**	**Awarded: $94.83**
	Van Siclen Chiropractic PC	**11/30/23 - 11/30/23**	**$57.30**	**Awarded: $57.30**
Total			**$543.61**	**Awarded: $543.61**

B. The insurer shall also compute and pay the applicant interest set forth below. 02/28/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay to Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

For cases filed on or after February 4, 2015, the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon, subject to no minimum fee, and a maximum fee of $1,360.00. 11 NYCRR 65-4.6(d).

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, Nicholas Tafuri, 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)

Nicholas Tafuri

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:
7f075d00006372a94e2411bd4592e639

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 09/10/2024