

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Golden Healthcare Chiropractic Diagnostic PC (Applicant)	AAA Case No.	17-24-1338-8843
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	0709797599 SKV
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

**ARBITRATION AWARD**

I, Evelina Miller, 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: YLT

1. Hearing(s) held on 09/03/2024  
Declared closed by the arbitrator on 09/03/2024

Robin Grumet Esq from Law Offices of Hillary Blumenthal LLC (Union City)  
participated virtually for the Applicant

Michael Rago Esq from Law Offices of John Trop participated virtually for the  
Respondent

2. The amount claimed in the Arbitration Request, **\$124.99**, 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 dispute arises from the underlying automobile accident on April 11, 2023, in which the Assignor (YLT), a 36-year-old-male was involved. Thereafter, Assignor sought private medical attention and was eventually evaluated with complaints of pain in the neck, lower back and the right shoulder. Eventually patient was recommended to undergo chiropractic treatment performed on 11/18/23. The bill in dispute is for chiropractic treatment performed on 11/18/23. Respondent denied Applicant's bills for date of service of 11/18/23 based on the IME of Dr. John Iozzio D.C., L.Ac. performed on 8/30/23, all orthopedic benefits were terminated effective 9/26/23.

The issue presented at the hearing is whether Respondent made out a prima facie case of lack of medical necessity, and if so, whether Applicant rebutted it.

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. This hearing was conducted via ZOOM.

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and amount of the loss sustained, had been mailed and received and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

#### **Medical Necessity:**

Respondent denied Applicant's bills for date of service of 11/18/23 based on the IME of Dr. John Iozzio D.C., L.Ac. performed on 8/30/23, all orthopedic benefits were terminated effective 9/26/23.

A denial premised on a lack of medical necessity 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, P.C., v. Nationwide Assur. Co.*, 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ.Ct., New York County, 2004); *King's Med. Supply Inc. v. Country Wide Ins. Co.*, 5 Misc. 3d 767, 783 N.Y.S. 2d 448.

Once Respondent submits an IME report or peer review that has a sufficient factual basis and medical rationale, then the courts have routinely found that Respondent has established its prima facie defense that the disputed medical service is medically unnecessary. *A Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table, Text in WESTLAW), Unreported Disposition, 2007 WL 1989432, 2007 N.Y. Slip Op. 51342(U) (N.Y. Sup. App. Term Jul 03, 2007). See also, *Amaze Medical Supply Inc. v. Eagle Insurance Company*, 2003NY Slip Op 51701 (U), 2 Misc.3d. 128 (App. Term 2d & 11 Dist.-2003).

**IME by Dr. John Iozzio D.C., L.Ac.**

On August 30, 2023, Assignor was examined by Dr. John Iozzio D.C., L.Ac., in a chiropractic evaluation. Dr. Iozzio reviewed the patient's medical history as well as performed an evaluation of the Assignor. Based on the medical records presented and the results of the evaluation, Dr. Iozzio concluded that claimant has reached maximum improvement, and medical treatment was no longer necessary.

At the time of the examination, patient presented with subjective complaints of pain in the neck, lower back and the right shoulder. Examination of the patient revealed no positive objective findings. All diagnoses was noted to be resolved. In conclusion of the evaluation, Dr. Iozzio stated that the patient achieved maximum improvement and further treatment was not warranted.

Based upon the foregoing, Respondent has set forth a cogent medical rationale in support of its defense.

Respondent has factually demonstrated the services rendered were not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App. Term 1 Dept. 2006).

In order for an applicant to prove that the disputed expenses were medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the IME reports. *Ortho-Med Surgical Supply, Inc. v. Progressive Cas. Ins. Co.*, 2012 NY Slip Op 50149(U) (App Term 2d, 11th & 13th Jud Dists Jan. 24, 2012); *Yklik, Inc. v. Geico Ins. Co.*, 2010 NY Slip Op. 51336(U) (App Term 2d, 11th & 13th Dists. July 22, 2010); *High Quality Medical, P.C. v. Mercury Ins. Co.*, 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010); *Pan Chiropractic, P.C. v. Mercury Ins. Co.*, 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009).

A letter of medical necessity sworn to by a provider who had examined assignor, along with other medical documentation, may be sufficient to rebut the IME and establish the medical necessity of the services rendered. See *Quality Psychological Servs., P.C. v. Mercury Ins. Group*, 2010 NY Slip Op 50601(U) (App Term 2d Dept., April 2, 2010). See also *Neomy Med., P.C. v. Geico Ins. Co.*, 2012 NY Slip Op 50145(U) (App Term 2d, 11th & 13th Jud Dists Jan. 24, 2012); *Vinings Spinal Diagnostic, P.C. v. Geico Gen. Ins. Co.*, 2010 NY Slip Op 51897(U) (App Term 2d Dept., Nov. 8, 2010) (an affidavit from a chiropractor "meaningfully referred to" the peer and "sufficiently rebutted the

conclusions set forth therein"); *Park Slope Med. & Surgical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 22 Misc.3d 141(A), 2009 NY Slip Op 50441(U) (App Term 2d, 11th & 13th Jud Dists 2009).

Likewise, an affirmation from the provider's assignor's treating doctor who stated that he had examined assignor around the time of the IME and whose findings contradicted the findings of the IME doctors is sufficient to raise an issue of fact as to the medical necessity of the disputed services. *Triumph Assocs. Physical v. New York Cent. Mut. Fire Ins. Co.*, 43 Misc. 3d 143(A), 2014 NY Slip Op 50875(U) (App Term 2d Dept. 2014).

### **Rebuttal by Applicant**

In opposition to the IME report of Dr. Iozzio, Applicant submits an evaluation report dated 11/18/23. At the time of that evaluation patient presented with complaints of pain in the neck, lower back, pelvis, as well as pain in the right shoulder. Ranges of motion were noted to be decreased in the cervical and lumbar spine as well as in the right shoulder. Orthopedic tests were positive. Reflexes were noted to be decreased. Muscle testing revealed decrease in strength. In conclusion of the evaluation, Dr. Manoy determined that the patient has improved but should still continue treatment.

Applicant also submits treatment notes dated throughout the course of treatment.

### **Conclusion:**

After reviewing all the evidence submitted, as well as considering the arguments presented at the hearing, I find the following. Initially, I find that Respondent presented sufficient factual basis and medical rationale, to establish that its prima facie defense that the disputed medical service is medically unnecessary. The IME by Dr. Iozzio performed noted that the patient presented with subjective complaints of pain. Examination of the patient revealed no positive objective findings.

Applicant relies on the submitted medical records, including evaluation reports and treatment notes.

Based upon a review of all submissions, and the oral arguments of the parties, I find that Applicant has met the burden of persuasion. Applicant has sufficiently refuted the findings of the IME which served to deny all future services. The submitted medical reports are reveal that the patient was still symptomatic at the time of the IME and future services were warranted.

According, Applicant's claim for reimbursement is granted.

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
	Golden Healthcare Chiropractic Diagnostic PC	11/18/23 - 11/18/23	\$124.99	Awarded: \$124.99
Total			\$124.99	Awarded: \$124.99

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/04/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred 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). In accordance with 11 NYCRR 65-3.9c, interest shall be paid on the claims totaling \$124.99 from the date the arbitration was commenced.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee upon the amount awarded plus the interest, as calculated in section "B" above, and in accordance with 11 NYCRR 65-4.6(e), i.e., 20 percent of the amount of first party benefits, plus interest thereon. The minimum attorney's fee payable shall be in accordance with 11 NYCRR 65-4.6c. For cases filed after February 4, 2015, there is no minimum attorney's fee but there is a maximum fee of \$1,360.00. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b)."

- 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 Kings

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

10/02/2024

(Dated)

Evelina Miller

**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:**  
2538e1c961f1231cdbcad111c8175d6b

### Electronically Signed

Your name: Evelina Miller  
Signed on: 10/02/2024