American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Timothy D Groth MD PC (Applicant)	AAA Case No.	17-24-1348-4296
	Applicant's File No.	24-003829
- and -	Insurer's Claim File No.	224363987
	NAIC No.	11851
Progressive Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Antonietta Russo, 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: Assignor

1. Hearing(s) held on 09/30/2024
   Declared closed by the arbitrator on 09/30/2024

   Jared Mallimo from The Licatesi Law Group, LLP participated virtually for the Applicant

   Liz Peabody from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,639.04**, 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 Assignor, a 38-year-old male restrained driver, was reportedly involved in a motor vehicle accident on August 15, 2022. Following the accident, Assignor suffered injuries which resulted in him seeking medical treatment. Thereafter, the Assignor underwent physical therapy, chiropractic manipulations and massage therapy for a period from April 10, 2024 through May 14, 2024. Applicant is seeking reimbursement for these services; however, the claims were timely denied based on an independent medical examination by Dr. Snitkoff that terminated benefits as of October 24, 2023. The only issue presented at the hearing was:

1.) Whether Respondent can sustain its lack of medical necessity defense?

4. Findings, Conclusions, and Basis Therefor

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The below noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing.

NON-RECEIPT OF CLAIM

As a threshold issue, Respondent asserts non-receipt of claims dated April 10, 2024, April 30, 2024, May 1, 2024, May 7, 2024 and May 14, 2024.

A prima facie case of entitlement to no-fault compensation is made out by submitting evidence that the prescribed statutory billing form has been mailed and received, and that the defendant failed to either pay or deny the claim within the requisite 30 day period. *Westchester Medical Center v. Lincoln General Insurance Company*, 60 AD 3d 1045, 877 NYS 2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Insurance Company*, 57 A.D. 3d 659, 816 NYS 2d 759 (2d Dept. 2008).

Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee. *New York and Presbyterian Hospital v. Allstate Insurance Company*, 29 A.D. 3d 547 (2 Dept. 2006) quoting, *Matter of Rodriguez v Wing*, 251 AD2d 335 (2d Dept. 1998). "The presumption may be created by either proof of actual mailing or proof of the standard office practice or procedure designed to ensure that items are properly addressed and mailed" *New York and Presbyterian Hospital v. Allstate Insurance Company*, 29 AD 3d 547 quoting *Residential Holding Corp. Scottsdale Insurance Company,* 286 AD 2d 679 (2 Dept. 2001). Such "office practice must be geared so as to ensure the likelihood that the [the correspondence] is always properly addressed and mailed", *Nassau Insurance Company v. Murray*, 46 NY 2d 828 (1978).

In the instant matter, Respondent contends the claims for the dates of service in question were never received. Alternatively, Applicant maintains the claims were timely forwarded to Respondent.

The Applicant has submitted a copy of a denial for each disputed claim. These denials confirm that the claims were received on time but were subsequently denied. I find that this evidence sufficiently establishes a rebuttable presumption that the claims were received by the Respondent.

Therefore, I find the Applicant's evidence compelling, and I rule that the Respondent's defense is invalid. Accordingly, I award this portion of the claim at the fee schedule amount of $573.00.

In terms of the remaining dates of service, it is now well settled that Applicant establishes "a prima facie showing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received 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 Dep't. 2004). In the case at bar, Applicant has met this burden.

MEDICAL NECESSITY

Once Applicant has established a prima facie case, the burden is on the insurer to prove that the medical treatment was not medically necessary. See, *Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co.,* 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dep't. 2005); *A.B. Medical Services, PLLC v. Geico Ins. Co*., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term 2nd & 11th Jud Dist 2003).

In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.,* 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. Respondent bears the burden of production in support of it lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co*., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

Furthermore, an IME report must also set forth a sufficient factual basis and medical rationale for the conclusion that further services are not medically necessary. See *Ying E. Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App Term 2d & 11th Dists. Sept. 3, 2008) (IME report, which indicates that, as of the date of the IME, there was no need for further treatment, is insufficient to demonstrate the lack of medical necessity of services rendered before the IME was conducted). An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mut. Fire Ins Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.).

In support of their contentions, Respondent submitted the chiropractic IME report of Robert Snitkoff, DC, dated October 12, 2023. The IME reports relied upon by the Respondent set forth those documents that were reviewed, details the examinations that were performed, the findings of the examinations, and concludes that the Assignor was found to be within normal limits, without any objective positive findings, and without need for further treatment. Based on these reports, the Respondent terminated future benefits as of the above-referenced dates. The Respondent's attorney argued that the IMEs are thorough and offers a conclusion that no further treatment was medically necessary.

I find the IME reports set forth a clear factual basis and medical rationale to recommend against reimbursement for the services at issue. The reports advanced reasonable arguments in support of the position that the services were unnecessary. The burden returns to Applicant to rebut Respondent's showing.

In opposition to Respondent's contentions, Applicant maintains that the services were necessary and relies on the medical records that pre-date and post-date the IME with the most contemporaneous reports dated October 11, 2022, February 16, 2023 and October 3, 2023; however, I find the reports in the record fail to meaningfully refute or rebut the IME reports and insufficient. Additionally, Applicant asserted that Respondent's denials are defective based on *General Accident Insurance Group v. Cirucci* 864, 414 N.Y.S.2d 512, 514 (1979). The Applicant contends that the Respondent's specific denials are defective, particularly because they fail to identify the physician who provided the services and do not specify the effective date of the denial. However, I respectfully disagree with the Applicant's assertion in this instance. The record includes Respondent's global denials that identify the IME physicians, and their corresponding No-Fault termination dates, and indicate that the Applicant was copied ('cc') on these denials.

Accordingly, I find in favor of Respondent and deny this portion of the claim.

Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. 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**
	Timothy D Groth MD PC	**04/16/24 - 04/16/24**	**$127.41**	**Denied**
	Timothy D Groth MD PC	**04/12/24 - 04/12/24**	**$132.99**	**Denied**
	Timothy D Groth MD PC	**04/30/24 - 04/30/24**	**$180.11**	**Awarded: $114.60**
	Timothy D Groth MD PC	**05/01/24 - 05/01/24**	**$180.11**	**Awarded: $114.60**
	Timothy D Groth MD PC	**05/03/24 - 05/03/24**	**$132.99**	**Denied**
	Timothy D Groth MD PC	**05/07/24 - 05/07/24**	**$154.23**	**Awarded: $114.60**
	Timothy D Groth MD PC	**04/10/24 - 04/10/24**	**$243.57**	**Awarded: $114.60**
	Timothy D Groth MD PC	**05/06/24 - 05/06/24**	**$127.41**	**Denied**
	Timothy D Groth MD PC	**05/08/24 - 05/08/24**	**$180.11**	**Denied**
	Timothy D Groth MD PC	**05/14/24 - 05/14/24**	**$180.11**	**Awarded: $114.60**

Total	**$1,639.04**	**Awarded: $573.00**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/17/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro-rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut*. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)." This amendment takes into account that the maximum attorney fee has been raised from $850.00 to $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, Antonietta Russo, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/30/2024
(Dated)

Antonietta Russo

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:
9bedb5fc4626a261be6e1c8bff5af420

Electronically Signed

Your name: Antonietta Russo
Signed on: 10/30/2024