

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Chiropractic & Next Step Physical
Therapy of Hicksville PLLC
(Applicant)

- and -

Plymouth Rock Assurance Preferred
Corporation
(Respondent)

AAA Case No.	17-24-1355-6402
Applicant's File No.	N/A
Insurer's Claim File No.	810902230109
NAIC No.	36587

ARBITRATION AWARD

I, Anne Malone, 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 11/14/2024
Declared closed by the arbitrator on 11/14/2024

Michael Galeno, Esq. from Dino R. DiRienzo Esq. participated virtually for the Applicant

Stamatis Michelakos, Esq. from Law Office of Joseph C. Sette & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,093.97**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,777.38 to conform to the appropriate fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 59 year old EIP reported involvement in a motor vehicle accident on February 5, 2023; claimed related injury and underwent a disability exam on

March 10, 2023, office visits on May 3, 2024 and June 3, 2024 and chiropractic treatment provided by the applicant from March 10, 2024 to June 3, 2024.

The applicant submitted a claim for these medical services, payment of which was denied based on the independent medical examination of the EIP by Rory Ciuffo, D.C. which was performed on April 4, 2024. The IME cut-off was effective on April 30, 2024.

The issue to be determined at the hearing is whether the respondent established that the treatment provided to the EIP from May 10, 2023 to June 3, 2024 was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

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

The Civil Courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is

conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the services at issue were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Ciuffo, which was objectively negative and unremarkable. Range of motion was determined with the assistance of a goniometer. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Ciuffo performed a complete and comprehensive examination of the EIP which did not identify any objective positive findings and determined that his injuries were resolved.

Based upon the physical examination and medical records reviewed, Dr. Ciuffo determined that despite his subjective complaints, the EIP was not disabled and that he could engage in all activities of daily living. The EIP reported that he had missed some time from work but was working at the same job at the time of the IME. Dr. Ciuffo noted that the EIP continued to receive chiropractic care three times a week for a year. Since he did not present with any objective clinical findings, it was Dr. Ciuffo's opinion that ongoing causally related chiropractic treatment was not medically necessary and that the EIP did not require household help or special transportation.

Respondent has factually demonstrated that the services provided by the applicant were not medically necessary. Accordingly, the burden now shifts to the 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 1st Dept. 2006.)

In response to the report of the physical examination of the EIP by Dr. Ciuffo, the applicant relied upon the submissions, including the re-examinations of the EIP on February 23, 2023 and May 3, 2024 which documented objective and subjective findings and progress notes recommending the same chiropractic treatment from February 10, 2023 to June 12, 2024.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented by Dr. Ciuffo based on his independent medical examination of the EIP and the reports of Dr. Wentz, the treating chiropractor. I find based on the IME and the medical records submitted that the report of Dr. Ciuffo was more persuasive in this instance.

Under these circumstances, the respondent has established that the post-IME treatment was not medically necessary.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this 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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of CT
SS :
County of Fairfield

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

11/19/2024
(Dated)

Anne Malone

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:
d86c81b645aaea305f46bedfaaff1be4

Electronically Signed

Your name: Anne Malone
Signed on: 11/19/2024