

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Addition Acupuncture, PC
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-24-1362-9698

Applicant's File No. ADD2023.244

Insurer's Claim File No. 218032924-008

NAIC No. Self-Insured

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 02/03/2025
Declared closed by the arbitrator on 02/03/2025

No appearance from Diliberto Law, PLLC participated by written submission for the Applicant

Michele Rita, Esq. from Hollander Legal Group PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,240.15**, 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 26 year old EIP reported involvement in a motor vehicle accident on August 2, 2021; claimed related injury and underwent acupuncture to the neck and lower back provided by the applicant from January 19, 2022 to September 21, 2022.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on the IME of the EIP by John Johnson, D.C., L.Ac. which was performed on December 12, 2021. The IME cut-off was effective on December 21, 2021. In response, the applicant submitted a rebuttal by Juan Xu, a licensed acupuncturist, one of the EIP's treating medical providers.

The issue to be determined at the hearing is whether the respondent established that the medical services provided by the applicant were 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.

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. Term2d, 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 provided to the EIP were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Johnson which was objectively negative and unremarkable. Range of motion for the neck and low back 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 for injury to her neck and low back. Dr. Johnson performed a complete and comprehensive examination of the EIP which did not identify any objective positive findings and determined that the injuries to her neck and back were resolved.

There were some positive findings to the EIP's left shoulder, which were "resolving." Dr. Johnson noted this and concluded that she had a mild disability related to her right shoulder and should avoid overhead activity.

Based upon the physical examination and medical records reviewed, Dr. Johnson determined that despite her subjective complaints, the EIP could perform her activities of daily living and working without restrictions or limitations. This is despite his finding that she had a mild disability, signs of Qi and blood flow stagnation, decreased range of motion related to her left shoulder and she indicated that she will be scheduled to undergo left shoulder surgery.

Dr. Johnson determined that Qi and blood stagnation in UB and DU channels of the cervical, thoracic and lumbar spine have been resolved. It was his opinion that there was no medical necessity massage therapy, diagnostic testing, durable medical equipment, household help or special transportation.

He concluded that no further chiropractic care or acupuncture treatment was indicated for the EIP's neck, mid and low back, left wrist, knee and ankle.

His examination of her left shoulder documented tenderness and decreased range of motion. However, it was his opinion that the EIP had not responded well to acupuncture treatment, therefore, no further acupuncture treatment was needed. He deferred comment with regards to the need for physical therapy to the appropriate specialty.

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. Johnson, the applicant relied upon the submissions, including the rebuttal by Juan Xu, a licensed acupuncturist, who reviewed the EIP's medical records related to the injuries sustained by the EIP and the treatment rendered to her.

In response to Dr. Johnson's evaluation of the EIP's need for further acupuncture treatment to the left shoulder, Juan Xu, determined that the Qi and blood stagnation in the left shoulder was evidence that the acupuncture treatment to his left shoulder was medically necessary. He discussed the general benefits of acupuncture and argued that the EIP's treating physicians were in the best position to determine the course of treatment for the EIP.

Juan Xu did not discuss the fact that the bills submitted in this claim only included acupuncture treatment to the EIP's neck and lower back and that there was no chiropractic or acupuncture treatment of her left shoulder related to this claim.

Although the initial acupuncture intake form indicates complaints of neck, low back, left shoulder and knee, the acupuncture progress notes submitted by the applicant document acupuncture treatment provided to the EIP from January 19, 2022 to September 2, 2022.

After a review of all the evidence submitted an issue of fact remains as to whether the acupuncture services rendered are medically necessary. Conflicting opinions have been presented by Dr. Johnson based on his independent medical examination of the EIP and the report of Juan Xu, licensed acupuncturist who treated the EIP and submitted a rebuttal on behalf of the applicant.

Since Juan Xu did not address the fact that based on the submissions, acupuncture treatment was only provided to the EIP's neck and back and did not involve treatment of the left knee from January 19, 2022 to September 21, 2022, I find that Dr. Johnson's submission 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.

02/04/2025

(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:
c789ab9eb83c3aeec3bf3a46885c5f89

Electronically Signed

Your name: Anne Malone
Signed on: 02/04/2025