American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Suffolk Chiropractic Rehabilitation & Physical Therapy, PLLC (Applicant)	AAA Case No.	17-24-1359-7875
	Applicant's File No.	NF 5074
- and -	Insurer's Claim File No.	0734738123
	NAIC No.	19232
Allstate Insurance Company (Respondent)		

ARBITRATION AWARD

I, Vincent Gerardi, 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: Injured Party

1. Hearing(s) held on 01/13/2025
   Declared closed by the arbitrator on 01/13/2025

   Michael Manfredi, Esq. from The Pomares Law Group, PLLC participated virtually for the Applicant

   Dana Nolan, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$816.79**, 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

   This case arises from a motor vehicle accident that occurred on 11/2/23. The eligible injured party was the driver in a motor vehicle. The issue in dispute is the denial of claim for chiropractic care based upon the results of the Independent Medical Examination by Dr. Robert Snitkoff, M.D. and associated termination of No-Fault benefit payments. The respondent's denials were timely denied.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the Hearing and entered in to the ADR Center, and have considered the oral arguments of the parties. Initially, according to the First Amendment to Regulation 68-D 11NYCRR 65-4.5, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered that the Arbitrator deems relevant to making an Award that is consistent with Insurance Law and Insurance Department Regulations.

This case arises from a motor vehicle accident that occurred on 11/2/23. The eligible injured party was a sixty-nine-year-old male. The injured party went to Peconic Bay Hospital where he was evaluated, Ct-scans were performed, he was treated and released. The injured party's initial chief complaints were headaches, and injuries to the neck, bilateral-shoulders, midback, and lower-back. There were decreased ranges-of-motion in the cervical, and lumbar, spines. The Spurling, Cervical-Compression, Cervical-Distraction, Shoulder-Depression, Jackson, Soto-Hall, Straight-Leg-Raise, Kemp, Nachla, and Yeoman, Tests were positive. The injured party started a treatment plan. A review of the medical records reflects that the injured party to date has received emergency services, physical therapy, chiropractic care, examinations, evaluations, consultations; neurologic/ orthopedist/ pain management; procedure; anterior cervical discectomy and fusion (5/24/24), EMG-NCV studies, MRI studies, Ct-scans; head/ neck, x-rays; thoracic/ lumbar/ right-shoulder/ left-shoulder, and pharmaceuticals. The issue before me is the reimbursement of claim for chiropractic care performed on 5/15/24, 5/20/24, 5/21/24, 6/19/24, 6/24/24, 6/26/24, 7/5/24, and 7/13/24.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by proving that it submitted a claim, set forth the fact and the amount of the loss sustained, and that payment of no-fault benefits were overdue (see Insurance Law 5106(a), Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564, 2004 N.Y. App. Div. LEXIS 3597 (2nd Dept. 2004), Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App Term 2nd & 11th Jud Dists). A "facially valid claim" is presented where it sets forth the name of the patient, date of accident, date of services, description of services rendered and the charges for those services (see Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company, 186 Misc. 2d 287, 717 N.Y.S. 2d 466 (1st Dist. Ct. Nass. Co.).

Proof that the benefits were "medically necessary" is not an element of the prima facie case. The defense that the benefits were not "medically necessary" is an affirmative defense borne by the insurer. The weight of judicial authority is now well established that the burden of proof is upon the insurer to prove that the medical treatment was not medically necessary (see AB Medical Services PLLC v. Geico Insurance Co., 2 Misc. 3d 26 (App. Term, 2nd & 11th Jud. Dists. 2003), Kings Medical Supply Inc. v. Country Wide Insurance Co., 783 N.Y.S. 2d 448 (N.Y. City Civ Ct., 2004). A denial premised on a lack of medical necessity must be supported by other proof which sets forth a factual basis and a medical rationale for denying the claim (see Amaze Medical Supply Inc. v.

Eagle Insurance Co., 2 Misc. 3d 1284, 784 N.Y.S. 2d 918 (Sup Ct App Term 2003). Respondent submitted its IME report as evidence that the within medical services were not medically necessary.

The respondent has offered the IME report, dated 4/16/24, of Dr. Robert Snitkoff, D.C. in support of their denials of claim. The doctor reviewed the injured-party's medical records and history, and performed a physical examination taking the injured-party's range-of-motion measurements with a goniometer. The cervical-spine revealed decreased range-of-motion in all planes with evidence of tenderness. The Cervical-Distraction, Soto-Hall, Foraminal-Compression, and Jackson-Compression, Tests were negative. The thoracic-spine revealed no evidence of tenderness or muscle spasm. The lumbar-spine revealed decreased range-of-motion in all planes with evidence of tenderness. The Straight-Leg-Raise, Ely, Nacha, Faber-Patrick, Kemp, and Minor-Sign, Tests were negative. The IME doctor concluded the cervical, thoracic, and lumbar sprains/strains resolved.

Upon a showing of a lack-of-medical-necessity through an IME, an applicant is required to rebut same. The injured-party's medical records reflect that an MRI study of the cervical-spine revealed C-2/C-3 posterior disc bulge impressing upon the thecal sac, C-3/C-4 posterior disc herniation approaching the ventral cord surface, bilateral posterior element bony hypertrophy and bilateral neural foraminal narrowing, C-4/C-5 grade I spondylolisthesis, C-5/C-6 posterior disc herniation favoring the right producing cord impingement and narrowing the right lateral recess and neural foramina, posterior bony spurring, and C-6/C-7 posterior disc bulge approaching the ventral cord surface, favoring the right, narrowing the right lateral recess. An MRI study of the thoracic-spine revealed T-2/T-3 posterior disc bulge with adjacent bony spurring impressing upon the thecal sac, T-3/T-4 posterior disc bulge impressing upon the thecal sac, anterior disc bulging with adjacent anterior bony spurring from T-3/T-4 through and including T-8/T-9, with multilevel anterior osteophytic bridging, within the T-3 marrow is a lobular region of increased signal on T-1 and T-2-weighted images compatible with a vertebral body hemangioma versus fatty infiltration, inferior T-7 endplate Schmorl's node, and anterior bony spurring at T-3/T-4. An MRI study of the lumbar-spine revealed L-2/L-3 posterior disc bulge impressing upon the thecal sac, narrowing both lateral recesses, L-3/L-4 posterior disc bulge impressing upon the thecal sac, narrowing both lateral recesses, disc extension into and narrowing the anteroinferior aspect of the right more so than left neural foramen, L-4/L-5 posterior disc bulge impressing upon the thecal sac, bilateral lateral recess and neural foraminal narrowing, L-5/S-1 posterior disc bulge impressing upon the thecal sac, left more so than right neural foraminal narrowing, anterior bony spurring at each level throughout the lumbar spine including multilevel osteophytic bridging, most prominent at L-2/L-3, disc height narrowing at L-1/L-2, L-4/L-5 and L-5/S-1, and hypertrophic facet arthropathy from L-2/L-3 through and including L-5/S-1. An MRI study of the right-shoulder revealed a partial tear of the rotator-cuff distal subscapularis tendon, an intra substance partial tear of the posterior glenoid labrum, a partial tear of the rotator-cuff under surface proximal supraspinatus tendon, decreased compared to prior study, supraspinatus and subscapularis tendinopathy, and acromioclavicular hypertrophic changes associated with impingement syndrome with progressive subcortical degenerative changes within the acromion process and distal clavicle, respectively.

Moreover, it is well settled Law that a party is bound by its own evidence. The evidence presented revealed that the injured-party needed additional treatment. In conclusion, the respondent has failed to set forth a factual basis and medical rationale for the claim's rejection (see Amaze Medical Supply v. Eagle Insurance, 2 Misc. 3d 1284, 784 N.Y.S. 2d 918 (Sup Ct App Term 2003). Based on the proof, I find that the respondent has proven the medical necessity of the services listed above. I am not persuaded that the injured-party's injuries were resolved based upon the numerous positive findings, i.e. decreased ranges-of-motion, recorded in the IME report of Dr. Robert Snitkoff, D.C., dated 4/16/24. In the case at bar, it was apparent that the patient was not fully recovered and that further medical treatment was needed. At the Hearing, the respondent representative did not cite fee schedule issues regarding this claim.

Accordingly, the applicant's claim is granted in its entirety.

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
	Suffolk Chiropractic Rehabilitation & Physical Therapy, PLLC	**05/15/24 - 07/13/24**	**$816.79**	**Awarded: $816.79**
Total			**$816.79**	**Awarded: $816.79**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/06/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   For the award claim of $816.79 for services rendered, interest is to accrue from the date of filing.

C. Attorney's Fees

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

   The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d) or as this matter was filed after February 4th, 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 in to 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, Vincent Gerardi, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/10/2025
(Dated)

Vincent Gerardi

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:
62b602687de54044d051dd9ed48ec536

Electronically Signed

Your name: Vincent Gerardi
Signed on: 02/10/2025