

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Westchester Medical Center
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1364-3762

Applicant's File No. FerraraMich

Insurer's Claim File No. 238391490

NAIC No. 11851

ARBITRATION AWARD

I, Athena T. Buchanan, 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: claimant

1. Hearing(s) held on 01/10/2025
Declared closed by the arbitrator on 01/10/2025

Michael Tomforde, Esq. from Dash Law Firm, PC participated virtually for the Applicant

Lance Faustin from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,010.71**, 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 claimant, a 41-year-old female, was involved in a motor vehicle accident May 19, 2023, as a restrained driver. As a result of the accident, the claimant reportedly sustained multiple injuries and was initiated on a course of rehabilitative care. This dispute arises from a claim for services rendered on April 9, 2024. Respondent denied the claim based on an independent orthopedic examination performed by Aruna Seneviratne, MD, on September 7, 2023. The issue to be decided is whether Respondent's defense can be sustained.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment by a qualified expert performing an independent medical examination, conducting a peer review of the injured person's treatment, or reconstructing the accident. *See, Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 2009 NY Slip Op 00351 (App Div 2d Dep't., Jan. 20, 2009); *Channel Chiropractic, P.C. v. CountryWide Ins. Co.*, 2007 Slip Op 01973, 38 A.D.3d 294 (1st Dep't. 2007); *Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 2007 NY Slip Op 27427, 17 Misc.3d 97 (App Term 1st Dep't., 2007).

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. *See, Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (App. Term 2d & 11th Dists. 2008).

In the present case, Respondent denied the services based on an IME report by Aruna Seneviratne, MD. At the time of the examination, the claimant presented with complaints of neck, back, shoulder and right hand/wrist pain. The cervical, thoracic and lumbar thoracic spine examinations revealed tenderness, muscle spasms and decreased ranges of motion. A neurological examination of the bilateral upper and lower extremities revealed no atrophy; muscle strength in each range was 5/5; deep tendon reflexes were at 1+; and, sensation to light touch was within normal limits. There was an examination of the bilateral shoulders revealed tenderness and decreased ranges of motion. There was an unremarkable examination of the bilateral elbows, wrists, hands, hips, ankles, and feet. Based on the examination, Dr. Seneviratne diagnosed the claimant with resolved conditions and recommended no further treatment from an orthopedic viewpoint.

I find that Respondent has factually demonstrated that the services were not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. *See, Dayan v. Allstate Ins. Co.*, ___ Misc.3d ___(A), ___ N.Y.S.3d ___ (Table), 2015 N.Y. Slip Op. 51751(U), 2015 WL 7900115 (App. Term 2d, 11th & 13th Dists. Nov. 30, 2015).

In opposition, Applicant relied on a referral reports. However, the reports are not contemporaneous with the IME and, therefore, cannot rebut its findings. Accordingly,

Respondent's denial must be sustained. *See, Pan Chiropractic, PC v. Mercury Ins. Co.*, 24 Misc.3d 136(A), 897 NYS2d 671(Table), 2009 NY Slip Op. 51495(U) at 2, 2009 WL 2032906 (App. Term2d, 11 & 13).

Applicant's claim is denied in its entirety.

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 claim is DENIED in its entirety

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

State of NY

SS :

County of Nassau

I, Athena T. Buchanan, 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)

Athena T. Buchanan

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:
fa0afd2b89a94681e837736e3575a909

Electronically Signed

Your name: Athena T. Buchanan
Signed on: 02/10/2025