

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.	17-24-1360-8000
	Applicant's File No.	182826
	Insurer's Claim File No.	9XINY07349
- and -	NAIC No.	29742

Integon National Insurance Company
(Respondent)

ARBITRATION AWARD

I, Glen Wiener, 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 02/19/2025
Declared closed by the arbitrator on 02/19/2025

Michael Spector, Esq. from The Odierno Law Firm P.C. participated virtually for the Applicant

Janice Rosen, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,834.39**, was AMENDED and permitted by the arbitrator at the oral hearing.

The total amount requested was amended to \$2,222.87 to reflect fee payments.

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

3. Summary of Issues in Dispute

Assignor J.J. a 31-year-old male was the driver of a vehicle involved in an accident on July 25, 2023. He was initially evaluated and treated at Stony Brook Hospital.

On August 1, 2023, complaining of headaches along with neck, back, trapezius, hip, and bilateral knee pains, Assignor presented to Applicant Suffolk Chiropractic Rehabilitation & Physical Therapy and commenced treatments.

On December 21, 2023, Assignor was examined by Robert Snitkoff, D.C. a chiropractor selected by Respondent [the "IME"]. At the evaluation, Assignor reported he still experiences radiating neck, radiating back, and bilateral knee pains. The examinations of Assignor's symptomatic cervical and lumbar spines revealed tenderness. Dr. Snitkoff opined Assignor's "sprains" had resolved and there was no need for any additional chiropractic treatment. Based on the IME report, Respondent terminated Assignor's chiropractic benefits effective January 25, 2024.

From April 1, 2024, through June 13, 2024, Applicant continued to provide chiropractic services to Assignor. Respondent denied Applicant's requests for reimbursement based on the IME.

The question presented is whether these post-IME chiropractic treatments were medically necessary.

4. Findings, Conclusions, and Basis Therefor

The decision below is based on the documents on file in the Electronic Case Folder maintained by the American Arbitration Association as of the date of this hearing and on oral arguments of the parties. No witness testimony was produced at the hearing.

Applicant Suffolk Chiropractic Rehabilitation & Physical Therapy PLLC as assignee of J.J. seeks \$2,222.87 reimbursement, with interest and counsel fees, under the No-Fault Regulations, for chiropractic services provided to Assignor.

Respondent Integon National Insurance Company insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., Respondent was obligated to reimburse the injured party (or their assignee) for all reasonable and necessary healthcare expenses arising from the use or operation of the insured vehicle.

Assignor J.J. a 31-year-old male was the driver of a vehicle involved in an accident on July 25, 2023. He was initially evaluated and treated at Stony Brook Hospital.

On August 1, 2023, complaining of headaches along with neck, back, trapezius, hip, and bilateral knee pains, Assignor presented to Applicant and commenced treatments.

On August 20, 2023, magnetic resonance imaging of Assignor's cervical and lumbar spines revealed C4-C5 and C5-C6 disc bulge impressing the thecal sac and L4-L5 and L5-S1 disc bulges along with L3-L4 and L4-L5 facet arthropathy.

Electrodiagnostic studies of Assignor's upper extremities performed on October 19, 2023, revealed evidence of bilateral C5 radiculopathies.

On December 21, 2023, Assignor was examined by Robert Snitkoff, D.C. a chiropractor selected by Respondent [the "IME"]. At the evaluation, Assignor reported he still experiences radiating neck, radiating back, and bilateral knee pains. The examinations of Assignor's symptomatic cervical and lumbar spines revealed tenderness. Dr. Snitkoff opined Assignor's "sprains" had resolved and there was no need for any additional chiropractic treatment. Based on the IME report, Respondent terminated Assignor's chiropractic benefits effective January 25, 2024.

From April 1, 2024, through June 13, 2024, Applicant continued to provide chiropractic services to Assignor. Respondent denied Applicant's requests for reimbursement based on the IME.

The question presented is whether these post-IME chiropractic treatments were medically necessary.

Applicant established a prima facie case by submitting evidence that payment of no-fault benefits was overdue, and proofs of its claims, using the statutory billing forms, were mailed to, and received by Respondent. *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 25 N.Y.3d 498, 501 (2015). The proof that Applicant mailed the claim forms to Respondent is embodied in the latter's denials, which reference receipt of the proofs of claim. See *Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co.*, 9 Misc.3d 97, 804 N.Y.S. 2d 532 (App. Term 9th and 10th Jud. Dist. 2005).

Once Applicant established a prima facie case the burden shifted to Respondent to prove the chiropractic services were not medically necessary. See *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dept. 2005); *A.B. Medical Services, PLLC v. Geico Ins. Co.*, 2 Misc.3d 26, 773 N.Y.S.2d 773 (App. Term 2d & 11th Jud. Dist. 2003); *Fifth Ave. Pain Control Center v. Allstate Ins. Co.*, 196 Misc.2d 801, 766 N.Y.S.2d 748 (Civ. Ct. Queens Co. 2003).

"A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Company*, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct. N.Y. Co. 2004).

The IME report documenting continuing positive clinical findings relative to Assignor's symptomatic cervical and lumbar spines does not set forth a sufficient factual basis and rationale for terminating Assignor's chiropractic benefits and denying Applicant's requests for reimbursement for the services provided.

The explanation that tenderness is subjective is rejected. The IME primarily involves subjective testing. Just as an individual may feign tenderness, he/she potentially can report pain when being palpated or during provocative testing or self-limit reductions in ranges of motion. True objective data is obtained from laboratory or diagnostic tests such as MRIs and electrodiagnostic studies.

Herein, magnetic resonance imaging of Assignor's cervical and lumbar spines documented disc bulges some of which impinged on the thecal sac and electrodiagnostic studies confirmed radiculopathy. These objective findings were not discussed or explained.

It is determined the IME report fails to establish that additional chiropractic services and treatments were not medically necessary.

Accordingly, Applicant is awarded \$2,222.87 reimbursement and Respondent's denials are vacated. This award is in full disposition of all No-Fault benefit claims submitted to 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	Amount Amended	Status
	Suffolk Chiropractic Rehabilitation & Physical Therapy, PLLC	04/01/24 - 06/13/24	\$2,834.39	\$2,222.87	Awarded: \$2,222.87
Total			\$2,834.39		Awarded: \$2,222.87

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/13/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after Apr. 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR §65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element of claim until such action is taken. 11 NYCRR §65-3.9 (c).

In accordance with 11 NYCRR §65-3.9(c), interest shall be paid on the claim from above noted date, which according to the timeline in the ECF is the date the arbitration was filed with the American Arbitration Association.

C. Attorney's Fees

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

In accordance with 11 NYCRR §65-4.6(d), the insurer shall pay Applicant an attorney's fee equal to 20% of the total amount awarded in this proceeding plus interest, with NO MINIMUM FEE and the maximum fee capped at \$1,360.

- 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 New York

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

02/20/2025
(Dated)

Glen Wiener

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:
f0596dcd0ff27b9d4a4cd47323693b65

Electronically Signed

Your name: Glen Wiener
Signed on: 02/20/2025