

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Anan Chiropractic
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No.	17-23-1328-4301
Applicant's File No.	FL23-63336
Insurer's Claim File No.	9XINY04043-03
NAIC No.	29742

ARBITRATION AWARD

I, Eileen Hennessy, 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-J.C.

1. Hearing(s) held on 03/12/2025
Declared closed by the arbitrator on 03/12/2025

Nancy Orlowski from Field Law Group P.C. participated virtually for the Applicant

James Scozzari from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,000.06**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated and agreed that (i) Applicant has met its prima facie burden by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim was mailed to and received by Respondent and (ii) Respondent's denial of the subject claim was timely issued.

3. Summary of Issues in Dispute

The record reveals that the Assignor-J.C., a 27-year-old female, claimed injuries as the driver of a motor vehicle involved in an accident that occurred on 4/5/2023. Applicant billed for EMG/NCV testing of the upper and lower extremities conducted on 8/8/2023. Respondent denied this claim based on a lack of medical necessity per the results of the Independent Medical Evaluation (IME) performed by Dr. John Iozzio, D.C., L.Ac.,

effective 7/3/2023. The issue to be determined is whether the services are medically necessary?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for EMG/NCV testing of the upper and lower extremities. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

Legal Standards for Determining Medical Necessity

Once applicant has established a prima facie case, the burden then shifts to respondent to establish a lack of medical necessity with respect to the benefits sought. *See, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc3d 1025A (2005). A denial premised on lack of medical necessity must be supported by competent evidence such as an IME, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim. *See, Healing Hands Acupuncture, P.C. v. Nationwide Assur. Co.*, 5 Misc3d 975 (2004).

In evaluating the medical necessity of services with proof of each party, particularly where the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary. The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. *Kingsborough Jewish Med. Ctr. v. All State Ins. Co.*, 61 A.D. 3d 13 (2d. Dep't, 2009), *See also Channel Acupuncture PC v. Country Wide Ins. Co.*, 38 AD 3d 294 (1st Dep't, 2007). An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. *E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008). Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 4(App. Term 2d & 11th Dists. Sept. 29, 2006). For an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, respondent's evidence. *See, Yklik, Inc. v. Geico Ins. Co.*, 28 Misc3d 133A (2010). The case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts. Moreover, the Appellate Term, 2d, 11th & 13th Dists., stated: "Assuming the insurer is successful in satisfying its burden, it is ultimately

plaintiff who must prove, by a preponderance of the evidence, that the services or supplies were medically necessary." Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 (App. Term 2d, 11th & 13th Dists. 2012). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied, as the ultimate burden of proof on the issue of medical necessity lies with the claimant. *See* Insurance Law § 5102; AJS Acupuncture, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002); Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994).

Application of Legal Standards

I note the validity of denials based upon negative IME findings have been recognized by several Courts. *See e.g.*, Innovative Acupunctures P.C. v. Mercury Ins. Co., 25 Misc.3d 137 (App. Term 2d & 11th Dists. 2009); B.Y. M.D., P.C. v. Progressive Casualty Ins. Co., 26 Misc.3d 125 (App. Term 9th & 10th Dists. 2010). An IME report can be the basis of a termination of benefits if ultimately found to be persuasive. Whether an IME report is persuasive, and meets the carrier's burden is a factual decision, which must be rendered on a case-by-case basis. Therefore, when, as here, an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for the claim's rejection, the presumption of medical necessity and causality attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute the IME findings and prove the necessity of the disputed services and the causal relationship between the injuries and the accident. *See*, CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 87 (App. Term 1st Dept.); A.Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc. 3d. 131 (A) (App Term 2d Dept.).

In support of its contention that further treatment was not medically necessary, Respondent relies upon the chiropractic and acupuncture examination report of Dr. John Iozzio, D.C., L.Ac. conducted on 6/13/2023. The examination reveals all tests were objectively negative and unremarkable apart from motor strength testing of the lower extremities, which revealed QL weakness. Range of motion was full. Orthopedic testing was negative. Dr. Iozzio diagnosed all injuries as resolved. Qi and blood stagnation were also resolved. From a chiropractic and acupuncture viewpoint, there was no need for any further treatment. Based upon Dr. Iozzio's examination all chiropractic and acupuncture No-fault benefits were denied effective 7/3/2023.

In this matter, I am faced with conflicting opinions concerning the medical necessity for the treatment. There are no legal issues to resolve. This dispute involves solely an issue of fact, that is, whether the services billed were medically necessary. Resolution of that fact is determined by which opinion is accepted by the trier of fact.

I find the report for the IME conducted by John Iozzio, D.C., L.Ac. on 6/13/2023 to be sufficient for the purpose of establishing Respondent's defense. The report adequately sets forth the factual basis and medical rationale to support the conclusion that the Assignor was not in need of any further treatment. That being so, the burden shifts to the Applicant to counter Respondent's showing.

While the report for the IME conducted by Dr. Iozzio is sufficient to establish Respondent's defense, after comparing the relevant evidence presented by both parties, and upon consideration of the arguments of counsel, the evidence submitted by the Applicant persuades me to find as a matter of fact that the Assignor's injuries had yet to resolve and that she needed continued chiropractic treatment. My decision accounts for the Assignor's consistent subjective complaints of pain and positive objective findings documented in the examinations by Zinaida Goldshteyn, D.C., dated 4/20/2023 and 8/8/2023, by Chadae Haffendon-Morrison, NP, dated 4/5/2023, 6/21/2023, 8/30/2023, and 10/4/2023, and by Anjani Sinha, M.D, dated 6/28/2023, MRI reports of the bilateral shoulders, dated 5/4/2023, EMG/NCV testing of the upper and lower extremities report, dated 8/8/2023, physical therapy treatment notes, dated 4/20/2023 through 8/24/2023, and chiropractic treatment notes, dated 4/20/2023 through 10/3/2023. The findings in these reports are sufficient to rebut the findings in the IME report. I find that Applicant was able to adequately rebut the conclusions of Dr. Iozzio's IME. Applicant's evidence is more persuasive. Therefore, Applicant's claim, denied premised upon the IME of Dr. Iozzio, is granted.

CONCLUSION

Accordingly, Applicant's claim is granted. 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Anan Chiropractic	08/08/23 - 08/08/23	\$1,000.06	Awarded: \$1,000.06
Total			\$1,000.06	Awarded: \$1,000.06

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/11/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. *See generally*, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." *See*, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009). Based on the regulations, interest shall accrue from the date the applicant requested arbitration in this matter. *See*, 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Applicant is entitled to an attorney's fee pursuant to Insurance Law §5106(a). After calculating the sum total of the first-party (No-Fault) benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, subject to the following limitations: In the event the above filing date was prior to Feb. 4, 2015, the attorney's fee is subject to a minimum of \$60.00 and a maximum of \$850.00, per 11 NYCRR 65-4.6(e). In the event the above filing date was on or after Feb. 4, 2015, the attorney's fee is subject to a maximum of \$1,360.00, per 11 NYCRR 65-4.6(d). In the event the above filing date was on or after Feb. 4, 2015 and first-party (No-Fault) benefits are awarded to more than one Applicant herein, the attorney's fee shall be calculated separately for each Applicant, each Applicant's attorney fee being subject to the \$1,360.00 maximum.

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

04/10/2025

(Dated)

Eileen Hennessy

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:

65ffc8f94c6f3c1fbdaefc79b18c309

Electronically Signed

Your name: Eileen Hennessy
Signed on: 04/10/2025