American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Suesserman Chiropractic PC (Applicant)	AAA Case No.	17-24-1356-3801
	Applicant's File No.	3133609
- and -	Insurer's Claim File No.	698443
	NAIC No.	Self-Insured
MVAIC (Respondent)		

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 06/09/2025
   Declared closed by the arbitrator on 06/09/2025

   Melissa Scotti, Esq. from Law Offices of Andrew J. Costella Jr., Esq. participated virtually for the Applicant

   Craig Marshall, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,069.69**, 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 58 year old EIP reported involvement in a motor vehicle accident on March 29, 2023; claimed related injury and underwent office visits, and chiropractic treatment from June 8, 2023 to May 14, 2024.

   The applicant submitted a claim for these medical services. Payment of the medical services provided from June 8, 2023 to August 1, 2023 was timely denied by the respondent on the grounds that the bills were submitted more than 45 days from the dates of service.

The respondent made payment in full for the charges for dates of service August 30, 2023 to September 5, 2023.

The remainder of the claim for dates of service December 15, 2023 to June 14, 2024 was timely denied based on the IME of the EIP by Philip Cilio, D.C., L.Ac. which was performed on November 28, 2023 The IME cut-off was effective on December 15, 2023. In response, David Susserman, D.C. submitted a rebuttal dated April 8, 2025 and Dr. Cilio submitted an addendum dated April 25, 2025.

The issue to be determined at the hearing are:

Whether the applicant established its *prima facie* entitlement to no fault benefits for services provided from June 8, 2023 to September 5, 2023.

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.

Applicant's *prima facie* entitlement to no fault benefits for dates of service June 8, 2023 to September 5, 2023

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004.)

An insurer in a no-fault matter will be precluded as a matter of law from asserting a defense based upon the untimely submission of the bill/bills at issue if such defense is not raised in a timely denial. See New York and Presbyterian Hospital v. Empire Ins. Co., 286 A.D.2d 322 (2d Dept.2001.)

If respondent has preserved such defense in a timely denial, respondent will still be precluded from proffering such defense as a matter of law unless respondent advised applicant that late submission of the bill/bills will be excused where the applicant can provide a reasonable justification of the failure to timely submit the bill/bills. 11 NYCRR 65-3.3(e). See also Radiology Today, P.C. v. Citiwide Auto

Leasing, Inc., 2007 NY Slip Op 27111 (App. Term 2nd and 11th Jud. Dists. 2007.)

The respondent's denial was based on late submission of the bills for dates of service June 8, 2023 to August 1, 2023. According to the NF-10s the bill was received on and the denial, which contained the requisite reasonable justification" language was dated

The respondent submitted an affidavit by Marlon Morales, a claim representative employed by the respondent with personal knowledge of the issue to establish that the bill for dates of service June 8, 2023 to August 1, 2203 was dated September 19, 2023 and received by the respondent on October 3, 2023. The denial was dated October 13, 2023.

The applicant failed to submit sufficient proof of timely mailing of the bill at issue.

Based on the foregoing, the respondent has established that the bill for the services rendered from June 8, 2023 to August 1, 2023 was submitted more than 45 days after the date of service and the applicant has not established its *prima facie* entitlement for no fault benefits for the claim at issue.

Therefore, the claim for dates of services June 8, 2023 to August 1, 2023 is denied with prejudice.

Medical Necessity - dates of service December 15, 2023 to June 14, 2024

To support a lack of medical necessity respondent must "set forth a factual basis and medical rationale for the IME doctor'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 medical services provided to the EIP from December 15, 2023 to June 14, 2024 were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Cilio, which was objectively negative and unremarkable. Range of motion 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. Dr. Cilio performed a complete and comprehensive examination of the EIP which did not identify any objective positive findings and determined that her injuries were resolved.

Based upon the physical examination and medical records reviewed, Dr. Cilio determined that despite her subjective complaints, the EIP was not disabled and that she could perform her activities of daily living and working full time without restrictions or limitations. It was Dr. Cilio's opinion that there was no medical necessity for furtherchiropractic treatment, massage therapy, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the medical services at issue 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 1 Dept. 2006.)

In response to the report of the physical examination of the EIP by Dr. Cilio, the applicant submitted a rebuttal dated April 8, 2025 by Dr. Susserman, the EIP's treating medical provider. Dr. Susserman discussed in detail the injuries sustained by the EIP and the treatment rendered to her. In his rebuttal he stated that the subject accident occurred on November 28, 2023. However, the medical records submitted, including those by Dr. Susserman stated that the date of this accident was March 29, 2023.

The submissions include progress notes with evaluations from June 8, 2023 to December 15, 2023. There were additional reports on January 3, 2024, January 24, 2024 , February 21, 2024 and May 14, 2024. The reports are all essentially the same with some changes in plans of care and goals.

In response to the rebuttal, the respondent submitted an addendum by Dr. Cilio dated April 25, 2025. He states that when the EIP was examined by him there were no pathological findings and she had already returned to pre-clinical activities including work in July, 2023.

Dr. Cilio stood by his original decision that chiropractic treatment was not necessary because the EIP had recovered from her injuries from a chiropractic standpoint.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have

been presented in the report of the IME by Dr. Cilio, the report of Dr. Susserman, who submitted a rebuttal on behalf of the applicant and the addendum by Dr. Cilio.

The EIP's medical records submitted support the applicant's determination that the medical services at issue were medically necessary.

In this instance, Dr. Susserman did not submit a rebuttal which sufficiently refers to and rebuts the findings of Dr. Cilio. In addition, the medical reports submitted do not contradict Dr. Cilio's assertions.

Under these circumstances, the respondent has established that the post-IME chiropractic treatment at issue was not medically necessary.

Therefore, the claim for dates of service December 15, 2023 to June 14, 2024 is dismissed with prejudice.

Accordingly, the entire 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.

07/01/2025
(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:
9d9dc2218e67af33e7a2a7261896732f

Electronically Signed

Your name: Anne Malone
Signed on: 07/01/2025