American Arbitration Association

NO-FAULT ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Professional Chiropractic Care, PC a/a/o Kathlean Parchment *Applicant*

-and-

State Farm Mutual Automobile Insurance Company *Respondent*

AAA ASSESSMENT NO.: 99-13-9041-5691 INSURER'S FILE NUMBER: 52189P265

AAA CASE NUMBER:

MASTER ARBITRATION AWARD

I, Peter J. Merani, the undersigned MASTER ARBITRATOR, appointed by the Superintendent of Insurance and designated by the American Arbitration Association pursuant to regulations promulgated by the Superintendent of Insurance at 11 NYCRR 65-4.10, having been duly sworn, and having heard the proofs and allegations of the parties on N/A, make the following AWARD.

Part I. Summary of Issues in Dispute

A no-fault hearing was held by the lower arbitrator for payment of manipulation under anesthesia (MUA) procedures performed by the Applicant provider on the Assignor on 2/20/13, 2/24/13 and 3/16/13 in the amount of $12,517.11. The Respondent insurer timely denied the claim. After hearing the lower arbitrator found for Respondent and denied the claim except for an office visit in the amount of $54.12.
The Applicant appeals to the master arbitrator for master review of the award on the grounds that the arbitrator's decision was arbitrary, capricious and incorrect as a matter of law.

Part II. Findings, Conclusions, and Basis Therefor

The master arbitrator's review of an award is limited to the standards set forth in CPLR Article 75 and defined by the Court of Appeals in Matter of Petrofsky v. Allstate Insurance Company, 54 N.Y. 2d 207 as follows: "In cases of compulsory arbitration, this Court has held that Article 7 of the CPLR 'includes review...of whether the award is supported by evidence or other basis in reason.' (Mount St. Mary's v. Catherwood, 26 N.Y. 2d 493). This standard has been interpreted to import into Article 75 review of compulsory arbitrations the arbitrary and capricious standard of Article 78 review. (Caso v. Coffey, 41 N.Y. 2d 153,158, Siegel, New York Practice, Section 603, pp. 865-866). In addition, Article 75 review ques-

tions whether the decision was rational or had plausible basis. (Caso v. Coffey, 41 N.Y.2d 153, supra)."
Additionally the grounds for review also include that the decision was incorrect as a matter of law (11 NYCRR 65-4.10(a)(4). However, "(The) master arbitrator exceeds his statutory power by making his own factual determination, by reviewing factual and procedural errors committed during the course of the arbitration, by weighing the evidence, or by resolving the issues such as the credibility of the witnesses." Matter of Richardson v. Prudential Property & Casualty Co., 230 A.D. 2d 861; Mott v. State Farm Insurance Company, 55 N.Y. 2d 224.

The Respondent insurer had denied the claims based on lack of medical necessity relying on a peer review report and an IME. The arbitrator found that the denial based on lack of medical necessity was not established by the Respondent and awarded one of the bills in the amount of $54.12 for a doctor visit that took place in Brooklyn.

However the Respondent insurer also argued that the claims should be denied as the MUAs were performed in New Jersey and the Applicant provider did not have a Certificate of Authority filed in New Jersey at the time the MUA services were performed.
The lower arbitrator found for the Respondent insurer and denied the claims for the MUAs that were performed in New Jersey. The arbitrator cited the New Jersey Statute N.J.S.A. 14A:13-3(1) and the New York regulation 11 NYCRR Section 65-3.16(a)(12) in support of his decision. The New Jersey Statute N.J.A.A. 14A:13-3(1) states "... No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the Secretary of State...". The New York regulation 11 NYCRR Section 65-3.16(a) (12) states " a provider of healthcare services is not eligible for reimbursement under section 5102 (A) (1) of the Insurance Law if the provider fails to meet any applicable New York State local licensing requirement necessary to perform such service in New York or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed...". As the Applicant provider did not have a certificate of authority issued by New Jersey to perform the services rendered in New Jersey the lower arbitrator denied the claim for the MUAs performed in New Jersey.
The Applicant provider argues that the failure to have secured the certificate of authority from New Jersey was deminimus or a mere technical violation of failure to file for the certificate and pay the fee and further argued that the defect was corrected retroactively by filing for the certificate after the services were rendered. The lower arbitrator found otherwise finding that the failure to have the certificate of authority when the services were rendered was in violation of the New Jersey statute and the New York regulation cited above.
Additionally the lower arbitrator in support of his decision cites the New Jersey court holding in Sever Caesars, Inc. v. Dooley House 2014 WL 4450441 (Superior Court of New Jersey, App. Div., September 11, 2014). In that case the court specifically decided the issue of whether a foreign corporation whose certificate of authority to conduct business in New Jersey had expired and whether upon receiving a newly issued certificate of authority the foreign corporation cured the lapse retroactively. The Court in the Seven Caesars case specifically held that the foreign corporation could not file claims to recover for services rendered during the period of the lapse when it did not have a certificate of authority and that filing and receiving the certificate of authority at a later date did not cure the lapse.

The lower arbitrator conducted many hearings on the issues and reviewed the evidence and law presented and wrote a lengthy decision.

Upon review of the evidence and briefs presented on this appeal, I cannot find any reason to find that the lower arbitrator was incorrect in his findings and legal conclusions and therefore cannot find any reason to disturb the lower arbitrator's award.

The lower arbitrator's award is detailed in its analysis of the issues presented and the arbitrator made findings after reviewing the evidence and referring to the evidence and law in support of his findings and determination.

The court in the Petrofsky case (cited above) further held that the master arbitrator's power of review does not constitute a de novo review but instead is limited to whether or not the evidence is sufficient, as a matter of law, to support the determination of the arbitrator.

Based upon a review of the record before me, I find the arbitrator arrived at his decision in a rational manner and the decision was based on the evidence and law before the arbitrator and that the evidence and law was sufficient for the arbitrator to make his findings and support his determination.

Accordingly, I find the award below was not arbitrary and capricious or incorrect as a matter of law and is therefore affirmed in its entirety.

Accordingly,

1. ☐ the request for review is hereby denied pursuant to 11 NYCRR 65-4.10 (c) (4)
2. X the award reviewed is affirmed in its entirety
3. ☐ the award or part thereof in favor of ☐ applicant ☐ respondent hereby reviewed is vacated and remanded for a new hearing ☐ before the lower arbitrator ☐ before a new arbitrator
4. ☐ the award in favor of the ☐ applicant ☐ respondent hereby reviewed is vacated in its entirety

—or—

5. ☐ the award reviewed is modified to read as follows:

   A. The respondent shall pay the applicant no-fault benefits in the sum of

_____________________________________ Dollars ($ ________), as follows:

Work/Wage Loss	$ ____________________
Health Service Benefits	$ ____________________
Other Reasonable and Necessary Expenses	$ ____________________
Death Benefit	$ ____________________
Total	$ ____________________

B1. ☐ Since the claim(s) in question arose from an accident that occurred prior to April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from

____________________________ at the rate of 2% per month, compounded, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

B2. ☐ Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from

____________________________ at the rate of 2% per month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

C1. ☐The respondent shall also pay the applicant ____________________ dollars ($ __________________) for attorney's fees computed in accordance with 11 NYCRR 65-4.6(d). ***The computation is shown below*** (attach additional sheets if necessary).

-or-

C2. ☐ The respondent shall also pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

C3. ☐ Since the charges by the applicant for benefits are for billings on or after April 5, 2002, and exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. See 11 NYCRR 65-4.6(i).

D. ☐ The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization for the arbitration below, unless the fee was previously returned pursuant to an earlier award

PART III. (Complete if applicable.) The applicant in the arbitration reviewed, having prevailed in this review,

A. the respondent shall pay the applicant
---------------- dollars ($--------------- for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary)

B. If the applicant requested review, the respondent shall also pay the applicant SEVENTY-FIVE DOLLARS ($75) to reimburse the applicant for the Master Arbitration filing fee.

This award determines all of the no-fault policy issues submitted to this master arbitrator pursuant to 11 NYCRR 65- 4.10

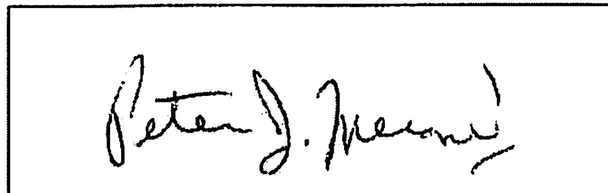
State of New York

County of Nassau ☐SS:

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

February 27, 2017

Date



Master Arbitrator's Signature

IMPORTANT NOTICE

This award is payable within 21 calendar days of the date of mailing. A copy of this award has been sent to the Superintendent of Insurance.

This master arbitration award is final and binding except for CPLR Article 75 review or where the award, exclusive of interest and attorney's fees, exceeds $5,000, in which case there may be court review de novo (11 NYCRR 65- 4.10(h)). A denial of review pursuant to 11 NYCRR 65-4.10 (c) (4) (Part II (1) above) shall not form the basis of an action de novo within the meaning of section 5106(c) of the Insurance Law. A party who intends to commence an Article 75 proceeding or an action to adjudicate a dispute de novo shall follow the applicable procedures as set forth in CPLR Article 75. If the party initiating such action is an insurer, payment of all amounts set forth in the master arbitration award which will not be subject of judicial action or review shall be made prior of the commencement of such action.

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Professional Chiropractic Care, PC / Kathlean Parchment (Applicant)	AAA Case No.	17-13-9041-5691
	Applicant's File No.	GTLPF061113004
- and -		
State Farm Mutual Automobile Insurance Company (Respondent)	Insurer's Claim File No.	52189P265
	NAIC No.	

ARBITRATION AWARD

I, Ioannis Gloumis, 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 06/04/2014, 10/09/2014, 12/17/2014, 04/15/2015, 09/10/2015, 09/30/2015, 03/30/2016, 06/22/2016, 10/19/2016, 10/27/2016

   Declared closed by the arbitrator on 10/27/2016

   Ralph Caio, Esq. from Law Offices of George T. Lewis, Jr., PC participated in person for the Applicant

   Elizabeth Adels, Esq. from McDonnell Adels & Klestzick, PLLC participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 12,517.11**, 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

   According to the submissions contained in the electronic case folder for this matter, the subject of this dispute arises from the underlying automobile accident of September 14, 2012, in which the Assignor, then a 39-year-old female restrained driver, was reportedly injured. Following the occurrence, the Assignor was evaluated and treated at the emergency department of Kings County Hospital's emergency department, and was later

discharged. Thereafter, the Assignor sought private medical attention and came under the care of Dr. Richard Ebbrecht for reported injuries to the neck, left shoulder, thoracic spine and lumbar spine.Subsequently, the Assignor was referred by Dr. Ebbrecht to the Applicant and presented to Applicant for evaluation on February 20, 2013. A physical examination was performed and a recommendation was made that the Assignor was a candidate for manipulation of anesthesia ("MUA"). Based upon Applicant's recommendation, MUA was performed by the Applicant upon the Assignor on February 20, 2013, February 24, 2013 and March 16, 2013 in New Jersey. Applicant submitted its billing for the aforementioned services to the Respondent and seeks the total amount of $12,517.11 from the Respondent.

Respondent received the bills and timely denied the claims based upon the peer review of Dr. Robert Snitkoff, a chiropractor certified in MUA. An IME was also performed by Dr. Joseph Cole on February 2, 2013. In addition to a defense of lack of medical necessity, the Respondent has raised an additional defense; namely, that the Respondent was not properly authorized to transaction business in New Jersey, in violation of New Jersey and New York law. Respondent contends that this defense is not a precludable defense and can be raised at any time. *State Farm Insurance Company v. Mallela*, 4 NY3d 313 (2005).Therefore, the issues to be determined are (i) whether the Applicant's failure to file a Certificate of Authority in accordance with *N.J.S.A. 14A:13-3(1)* and 11 NYCRR 65-3.16(a)(12) is a mere technical defect that does not affect the Applicant's eligibility to receive No-Fault reimbursement or a material jurisdiction defect that precludes reimbursement; and, (ii) if eligible, then whether the Respondent has established its prima facie burden of lack of medical necessity; and, if so, whether the Applicant has successfully refuted same.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions documents contained in the American Arbitration Association's Electronic Case Folder, said submissions constituting the record in this case. This award is rendered upon the oral arguments of the parties at the arbitration hearing date and the documentary evidence submitted by the parties. Dr. Diana Vavikova appeared and testified on behalf of the Applicant in regards to the services at issue.

Except for the initial evaluation of February 20, 2013, which according to the NF-3 and Dr. Vavikova was performed in Brooklyn, the remaining services in dispute were all performed in Manalapan New Jersey. Moreover, there is no dispute that at the time of all of the services in dispute, the Applicant was a New York Professional Corporation,and that there was no Certificate of Authority from the State of New Jersey authorizing the Applicant to perform services in New Jersey, where the subject services were provided. It is also undisputed that the Applicant's principal, Dr. Vavikova, is licensed to provide services in both New York and New Jersey.

Respondent argues that because the Applicant Professional Corporation did not have that Certificate of Authority filed at the time of the services, it is in violation of New Jersey Statute *N.J.S.A. 14A:13-3(1)* and *11 NYCRR 65-3.16(a) (12)*. Specifically, *N.J.S.A. 14A:13-3(1)* states: *"...No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the Secretary of State..."*

Furthermore, the Respondent contends that since the Applicant was not authorized to conduct business in the State of New Jersey at the time of the services, the Applicant also violated *11 NYCRR §65-3.16(a) (12)* which states as follows *"...A provider of healthcare services is not eligible for reimbursement under section 5102 (A) (1) of the Insurance Law if the provider fails to meet any applicable New York State local licensing requirement necessary to perform such service in New York or meet any applicable licensing requirement necessary to perform such service in any other state in which such services is performed..."*

Applicant counters that this is not a licensing issue as the case was in *State Farm v Malella*, 4 NY3d 313 (2005), but rather a mere technical violation based upon the Applicant's failure to file for a Certificate of Authority and pay a fee. Applicant also argues that it has corrected the defect retroactively by filing for the Certificate of Authority after the fact, evidence of which is reflected in the submissions.

While the Court in the *Mallela* decision dealt with the issue of a fraudulently incorporated Applicant, the application of the No-Fault Regulation addresses all Applicants that fail to meet local licensing requirements, whether they are fraudulently incorporated or not. While the individual chiropractors involved were licensed in both the States of New York and New Jersey at the time of the services, the Professional Corporation Applicant seeking No-Fault reimbursement for said services was not authorized to transact business and provide the services in New Jersey at that time.

This Arbitrator finds that the requirement imposed by *N.J.S.A. 14A:13-3(1)* is not de minimus to the state of New Jersey and that Applicant was in violation of both the New Jersey regulation *N.J.S.A. 14A:13-3(1)* and New York Regulation *11 NYCRR §65-3.16(a) (12)* when it performed the services in dispute. The defense imposed is a non-precludable defense and it can be imposed at any time, up to and including the time of the hearing.

In regards to the Applicant's argument that its failure to obtain a Certificate of Authority in New Jersey prior to the services in dispute was cured by its subsequent filing, the Respondent relies upon the Court's holding in *Seven Caesars, Inc. v. Dooley House*, 2014 WL 4450441 (Superior Court of New Jersey, App.Div.) (September 11, 2014).In *Seven Caesars*, the New Jersey Appellate Division specifically decided the issue of

whether a foreign corporation whose Certificate of Authority to conduct business in New Jersey had expired and whether upon receiving a newly issued Certificate of Authority the foreign corporation cured the lapse retroactively. The Court specifically held that during the foreign corporation could not file claims to recover for services rendered during the period of the lapse when it did not have a Certificate of Authority and that filing and receiving the Certificate of Authority at a later time did not cure the lapse. Based upon the New Jersey court's holding in Seven Caesars, I find that Applicant's argument is without merit. Therefore, the Applicant is precluded from No-Fault reimbursement for the services performed in New Jersey asit did not have a filed New Jersey Certificate of Authority when it performed the services. Howver, the Applicant performed the initial evaluation of February 20, 2013 in Brooklyn, New York. There is no finding in this matter that the Applicant is not eligible to recover No-Fault benefits for the services rendered in New York.

The Respondent must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. See *Vladimir Zlatnick, M D. P.C. v. Travelers Indem. Co.*, 12 Misc.3d 128(A), 2006 NY Slip Op 50963 (U) (App Term 1st Dept. 2006). The burden is on the insurer to prove that the medical services were unnecessary. See: *Behavioral Diagnostics v. Allstate Ins. Co.*, 3 Misc. 3d 246, 776 N.Y.S.2d 178, 2004 Slip Op. 24041 (Civ. Ct. Kings County 2004); *A.B. Medical Services v. Geico Ins.*, 2 Misc. 3d 26, 773 N.Y.S.2d 773, 2003 Slip Op 23949 (App Term, 2d Dept 2003). See *Elm Medical P.C. v. American Home Assurance Co.*, 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 (Civ. Ct., Kings Co., 2003); *Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co.*, 196 Misc. 2d 801,766 NYS2d 748 (Civ. Ct., Queens Co., 2003).

The Applicant performed the initial evaluation of February 20, 2013 in Brooklyn, New York. I have reviewed the peer review of Dr. Snitkoff, all of the medical evidence presented, and have heard the extensive testimony of Dr. Vavikova at one of the multiple hearing dates. I find that Respondent has failed to establish its prima facie burden of lack of medical necessity for the evaluation performed on February 20, 2013. The MUA and related services in dispute that were performed in New Jersey are hereby denied. Therefore, the Applicant is awarded the amount of $54.12 for the evaluation performed in New York on February 20, 2013.

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.

	Amount Claimed	**Amount Awarded**
Medical	$ 12,517.11	$ 54.12
TOTAL	$ 12,517.11	$ 54.12

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 09/19/2013, which is a relevant date only to the extent set forth below.)

   Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)*(stay of interest).

C. Attorney's Fees

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

   The Respondent shall also pay the Applicant, an attorney's fee, in accordance with *11 NYCRR 4.6(e)* and in accordance with the New York State Insurance Department opinion letter dated February 26, 2003. However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of *11 NYCRR 4.6(b).*

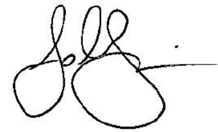
D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

State of New York
SS :
County of Nassau

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

11/01/2016
(Dated)



Ioannis Gloumis

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:
d7948e47a4da044dd904cd48ee277597

Electronically Signed

Your name: Ioannis Gloumis
Signed on: 11/01/2016 3:05:06 PM