

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accelerated Surgical Center of North Jersey
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-15-1015-5298

Applicant's File No.

Insurer's Claim File No. 778120-05

NAIC No. 16616

ARBITRATION AWARD

I, Bernadette Connor, 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 09/29/2016, 03/09/2017
Declared closed by the arbitrator on 03/09/2017

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the **Applicant**

Christopher O'Donnell, Esq. from Short & Billy PC participated in person for the **Respondent**

2. The amount claimed in the Arbitration Request, **\$ 32,600.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount claimed to \$4,237.58, in compliance with the fee schedule.

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

3. Summary of Issues in Dispute

Whether Applicant is entitled to reimbursement for medical services provided to the Assignor herein as a result of injuries sustained in a motor vehicle accident that occurred on August 31, 2014.

4. Findings, Conclusions, and Basis Therefor

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms with the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

Applicant seeks reimbursement for epidural steroid, nerve block and trigger point injections provided to the Assignor, a 57 year-old female, who sustained injuries to the neck, back, right shoulder and right knee in a motor vehicle accident on August 31, 2014. The dates of service at issue are January 15, 2015 and March 5, 2015. Respondent denied payment for the injections provided on January 15, 2015 based on an IME report dated December 2, 2014 from David Manevitz, D.O. Dr. Manevitz performed a physical medicine and rehabilitation and acupuncture examination on December 2, 2014 and concluded that the Assignor was not in need of further treatment.

Respondent's denial for the nerve block injection provided on March 5, 2015 was predicated on a report dated April 22, 2015 from Anthony J. Spataro, D.O. Dr. Spataro reviewed the Assignor's medical records and found no medical necessity for the nerve block injection. He argued that injections are recommended in instances where there is clinical evidence demonstrating the presence of symptoms not shown in this case, including radicular pain, dermatomal hypoesthesia, weakness of muscle groups innervated by the involved nerve roots and diminished deep tendon reflexes. Dr. Spataro also argued that the efficacy of epidural steroid injections has not been established.

In response to Dr. Spataro and Dr. Manevitz' reports, Applicant submitted into evidence a rebuttal report from Irfan A. Alladin, M.D. Dr. Alladin argued that medial branch block injections are necessary when oral medications and physical therapy fail to work. In this case, the Assignor had persistent complaints of neck pain radiating to the right shoulder, arm, and middle back, numbness and tingling of the right arm and hand and lower back pain that radiated to the buttocks and right lower extremity. Physical examination revealed restricted ranges of motion of the cervical spine, thoracic spine, lumbar spine and right shoulder. Orthopedic tests were positive, including Kemp's test, straight leg raise test, Lasegue's test, Valsalva's test and Patrick's test.

I find that Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3rd 128, 784 N.Y.S. 2d 918 (2003).

Once Applicant establishes a prima facie case of medical necessity, the burden then shifts to Respondent. Respondent must then produce a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic P.C. v. National Assurance Co.*, 5 Misc. 3d 975; *Citywide Social Work, et. al. v. Travelers Indemnity Co.*, 3 Misc. 3d 608.

A report relied upon by an insurer to defend its denial for No-Fault benefits must demonstrate that the services rendered were not in agreement with generally accepted medical/professional practice. *Jacob Nir, M.D. Assignee of Josapphat Etienne v. Allstate Insurance Co.*, 796 N.Y.S.2d 857. "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc. 3d. 608, 777 N.Y.S. 2d 241, 2004 NY Slip Op 20034 NY Slip Op 24034 [Civ. Ct. Kings County 2004].

Services provided on January 15, 2015:

After carefully reviewing the evidence presented, I find that Respondent has failed to rebut Applicant's prima facie case of medical necessity. Dr. Manevitz failed to set forth a clear factual basis and medical rationale for concluding that further health care services were not medically necessary. Dr. Manevitz' report demonstrated that the Assignor continued to be in need of treatment. See *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc. 3d 144 (A), 873 N.Y.S.2d 238, 2008 N.Y. Slip Op. 51863 (U), (App. Term 2nd & 11th Dists. Sept.3, 2008). I note that Dr. Manevitz concluded that the Assignor was not in need of further treatment. However, he indicated that at the time of the examination, the Assignor complained of pain in the neck, back and right knee. He noted that the Assignor had a mild disability, and he recommended that she be referred to a pain management specialist for "future treatment options." Dr. Manevitz also indicated that the Assignor ambulated with an antalgic gait to the right and had difficulty walking on heels and toes due to right knee pain. Dr. Manevitz noted that a Traditional Chinese examination revealed evidence of Bi Syndrome. He diagnosed her with resolving right knee sprain, lumbar sprain and resolving stagnation of Chi on the bladder channel and kidney channel.

Services provided on March 5, 2015:

I find that Respondent has failed to rebut Applicant's prima facie case of medical necessity. Dr. Alladin's report addressed the issues Dr. Spataro raised in his report and demonstrated that epidural injections provided to the Assignor on March 5, 2015 were medically necessary. See *Pan Chiropractic PC v. Mercury Ins. Co.* 24 Misc. 3d 136 (A) (App Term 2009); *Favorite Health Products Inc. v. GEICO*, 26 Misc. 3d 145 (A) (App Term 2nd Dept. 2010).

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
	Accelerated Surgical Center	01/15/15 - 03/05/15	\$32,600.00	Awarded: \$4,237.58
Total			\$32,600.00	Awarded: \$4,237.58

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 07/17/2015, which is a relevant date only to the extent set forth below.)

Respondent issued timely denials for Applicant's claim. Therefore, pursuant to *LMK Psychological Services*, 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009), interest shall begin to accrue as of the date the claim is received by the American Arbitration Association until payment is made. The record reveals that the American Arbitration Association received the request for arbitration on July 17, 2015. The interest shall be two percent per month, simple, not compounded, on a pro rata basis using a 30 day month.

NOTE: Interest in this matter was stayed as of September 29, 2016.

C. Attorney's Fees

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

With respect to the claim for which compensation was awarded, Respondent shall pay Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6 (e). Since the within arbitration request was filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than 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).

- 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 New York

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

04/21/2017
(Dated)

Bernadette Connor

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:
a858a1fd9ed6bb132f4f1415ce15a53d

Electronically Signed

Your name: Bernadette Connor
Signed on: 04/21/2017