American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Raia Medical Health PC (Applicant)	AAA Case No.	17-15-1013-7742
	Applicant's File No.	
- and -	Insurer's Claim File No.	52328
	NAIC No.	24309
Hereford Insurance Company (Respondent)		

ARBITRATION AWARD

I, Jeffrey Grob, 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: Patient

1. Hearing(s) held on 01/14/2016, 08/10/2016, 04/13/2017
   Declared closed by the arbitrator on 04/13/2017

   Walter Pisary, Esq. from The Law Offices of Hillary Blumenthal P.C. participated in person for the Applicant

   Antoinette Terry & Michael Tomforde, Esq. from Law Offices of Rubin & Nazarian participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 878.67**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulated that the denial issued herein was timely, and that the claim conforms to the governing fee schedule.

3. Summary of Issues in Dispute

   Whether the Applicant demonstrated entitlement to No-Fault benefits for the advanced imaging services provided on December 10, 2014.

4. Findings, Conclusions, and Basis Therefor

This award is predicated upon both a review of the respective submissions of the parties contained within the electronic case file maintained by the American Arbitration Association and the oral argument of their representatives on the date of the hearing.

The dispute arises from an automobile accident on November 6, 2014, in which the patient, a then 46 year old male, was involved. The Record reflects that the patient received emergency services at St. Barnabas Hospital and, thereafter, consulted and/or treated with, inter alia, Drs. Thomas Tesi, Clyde Weissbart, Paul Scarborough and Richard Pearl. It was Dr. Pearl who referred the patient for a left knee MRI film study, and it is compensation for the corresponding imaging services provided by the Applicant that is at issue in this proceeding.

The Applicant established its prima facie case by proof that the prescribed statutory billing forms had been received and that payment of no-fault benefits was not forthcoming. (See, New York & Presbyt. Hosp. v. Countrywide Ins. Co., 44 A.D.3d 729 [N.Y. App. Div. 2d Dep't 2007]) Proof of the receipt of the Applicant's billing is also implicit in the timely denial issued by the insurer. The confluence of the foregoing catalyzes the Respondent's obligation to demonstrate the validity of its defense.

The insurer's denial raised the asserted absence of medical necessity based on the analysis of its designated peer, Dr. Thomas Nipper, MD. The corresponding report dated February 3, 2015, has been submitted in support of the Respondent's position.

In focusing on the peer review, I note that "[a]s part of its prima facie showing, the [patient or, as here, the provider, as assignee] is not required to show that the contents of the statutory no-fault forms themselves are accurate or that the medical services documented therein were actually rendered or necessary. Stated another way, the [patient's assignee] is not required to establish the merits of the claim to meet its prima facie burden. (Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 114 A.D.3d 33, 45 [N.Y. App. Div. 2d Dep't 2013] [emphasis supplied])

On the contrary, "[m]edical necessity is presumed upon the timely submission of a no-fault claim (see All County Open MRI & Diagn. Radiology P.C. v. Travelers Ins. Co., 11 Misc. 3d 131[A], 815 N.Y.S.2d 493, 2006 NY Slip Op 50318[U] [App Term, 9th & 10th Jud Dists 2006]).

Thus, ordinarily it falls to the defense to establish that the billed-for services were not medically necessary." (Park Slope Med. & Surgical Supply, Inc. v. Progressive Ins. Co., 34 Misc. 3d 154[A] [N.Y. App. Term 2012] [concurring opinion, Golia, J.]; see, also, Kings Med. Supply Inc. v. Country-Wide Ins. Co., 5 Misc. 3d 767, 771 [N.Y. Civ. Ct. 2004 ["It is by now firmly established that the burden is on the insurer to prove that the medical services or supplies in question were medically unnecessary {citation omitted}."])

The carrier, to establish the validity of its defense on a prima facie level and put the Applicant to its proof, must, as a minimum, demonstrate both a factual predicate and medical rationale for the asserted absence of medical justification for the specific service provided to the patient, and must premise its contention upon uncontroverted evidence of generally accepted medical standards of care. (See, Nir v. Allstate Ins. Co., 7 Misc. 3d 544, 547 [N.Y. Civ. Ct. 2005])

Thus, the focus falls squarely on the Nipper report.

Although critical of the underlying study, the peer fails to discuss the significance of the positive Mc Murray sign, together with "wasting of the vastus medialis muscle and a grade 2 knee effusion" (Pearl Report [11/19/14]) noted by the referring physician.

Moreover, the referral appears consistent with the medical indications delineated within the medical literature supplied by the peer.

Lastly, the peer has not explained how the diagnostic procedure under review could be construed as medically unnecessary when it yielded positive findings. (See, Nir v. Allstate Ins. Co., 7 Misc3d 544, 548 [N.Y. Civ. Ct. 2005])

On the whole, the deficiencies noted undermine the peer's position.

Based on the foregoing, I find that the peer review falls short of the Nir paradigm and is not sufficient to overcome the presumption of medical necessity that arises upon the timely submission of a no-fault claim. (See, All County, LLC v. Tri-State Consumer Ins. Co., 34 Misc. 3d 1216[A] [N.Y. Dist. Ct. 2012])

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**
Raia Medical Health PC	**12/10/14 - 12/10/14**	**$878.67**	**Awarded: $878.67**
Total		**$878.67**	**Awarded: $878.67**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 06/22/2015, which is a relevant date only to the extent set forth below.)

Interest shall be calculated from the date listed above.

C. Attorney's Fees

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

An attorney's fee shall be paid by Respondent to Applicant upon the amount awarded of $878.67 and the interest as calculated **in section "B" above**, and in accordance with 11 NYCRR 65-4.6(d).

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

04/23/2017
(Dated)

Jeffrey Grob

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:
be36e39298e8607b3aafe08c11df1eb9

Electronically Signed

Your name: Jeffrey Grob
Signed on: 04/23/2017