

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

CitiWide Auto Leasing DBA All Car Rent A
Car
(Respondent)

AAA Case No. 17-16-1041-5514

Applicant's File No. 89631

Insurer's Claim File No. NF9102062315

NAIC No. Self-Insured

ARBITRATION AWARD

I, Mitchell Lustig, 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 05/08/2017
Declared closed by the arbitrator on 05/08/2017

Naomi Cohn, Esq. from Ursulova Law Offices P.C. participated in person for the Applicant

Citwide Auto Leasing from CitiWide Auto Leasing DBA All Car Rent A Car participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,363.17**, 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

Whether the services provided to the Assignor after the IME cutoff were medically necessary?

4. Findings, Conclusions, and Basis Therefor

In dispute is Applicant Brooklyn Medical Practice, PC's claim as the assignee of a 29-year-old female injured in a motor vehicle accident on June 23, 2015, for

reimbursement in the sum of \$1,363.17 for office visits and physical therapy treatments provided to the Assignor for dates of service February 8, 2016 to June 29, 2016.

The Respondent timely denied the claim based upon an orthopedic independent medical examination performed by Dr. Dorothy Scarpinato on August 27, 2015 that terminated all further orthopedic treatment effective September 8, 2015, which is five days after the Respondent issued its blanket denial on September 3, 2015. Thus, the issue presented for my determination is whether the Respondent has proved that the post-IME cutoff services provided to the Assignor were not medically necessary.

I have reviewed the documents contained in the ADR Center. This decision is based upon the submissions of the parties and the arguments made by the parties at the hearing.

A health care provider establishes its prima facie entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2nd Dept. 2009); Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that the Applicant has established a prima facie case.

Upon proof of a prima facie case by the applicant, the burden shifts to the insurer to prove that the services were not medically necessary. A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App. Term 2d and 11th Jud. Dists. 2004); Kings Medical Supply, Inc. v. Country-Wide Insurance Company, 5 Misc.3d 767, 2004 N.Y. Slip Op. 24394 (Civ. Ct. Kings Co. 2004); Amaze Medical Supply Inc. v. Eagle Insurance Company, 2 Misc.3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App. Term 2nd and 11th Jud. Dists. 2003).

In the event that an insurer relies on a peer review report or independent medical examination to demonstrate that a particular service was medically unnecessary, the medical expert's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. In addition, the expert's opinion must be supported by evidence of generally accepted medical/professional practice or standards. Nir v. Allstate Insurance Company, 7 Misc.3d 544, 2005 N.Y. Slip Op. 25090 (N.Y. Civ. Ct. Kings Co. 2005). 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. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. Kings Co. 2004).; Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance Company, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App. Term 2nd and 11th Jud. Dists. 2008).

The Assignor presented to Dr. Scarpinato on August 27, 2015. Although Dr. Scarpinato noted the Assignor's complaints of "neck, back, left shoulder, left knee and left ankle

pain," upon examination she observed full range of motion in the Assignor's cervical spine, thoracolumbar spine, left shoulder and left knee. The Spurling's test in the cervical spine, the Straight Leg Raising test in the lumbar spine, the Neer and Hawkins tests in the left shoulder and the Lachman's and McMurray's tests in the left knee were normal. Dr. Scarpinato further found that deep tendon reflexes, muscle strength and sensation in the upper and lower extremities were normal. She diagnosed all the Assignor's injuries as fully resolved and concluded that no further orthopedic treatment was medically necessary.

I find that Dr. Scarpinato's IME report sets forth an adequate factual basis and medical rationale for the rejection of the post-IME cutoff bills, and is sufficient to rebut the presumption of medical necessity attached to them. East Coast Acupuncture Services, P.C. v. American Transit Insurance Company, 14 Misc.3d 135(A), 2007 N.Y. Slip Op. 50213(U) (App. Term 1st Dept. 2007).

Hence the burden shifts to the applicant for no-fault benefits to refute the IME report and prove the medical necessity of the disputed services. AJS Chiropractic, P.C. v. Mercury Insurance Company, 22 Misc.3d 133(A), 2009 N.Y. Slip Op. 50208(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2009); NYC East-West Acupuncture, P.C. v. Maryland Casualty Insurance Company, 20 Misc.3d 143(A) 2008 N.Y. Slip Op. 51762(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2008); West Tremont Medical Diagnostic, P.C. v. Geico, 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2nd and 11th Jud. Dists. 2006).

To refute the IME, the Applicant has submitted the following evidence: (1) an initial evaluation dated **February 8, 2016** and re-evaluations dated **March 9, 2016**, **April 5, 2016** and **June 29, 2016** from the Assignor's treating physician, Dr. Salehin Sayeedus and (2) a rebuttal to Dr. Scarpinato's IME by Dr. Sayeedus dated February 27, 2017.

The conflicting medical expert opinions adduced by the parties sufficed to raise an issue as to the medical necessity of the treatment underlying the provider's first-party no-fault claim. See Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013).

After careful consideration of the parties' medical evidence, I find that the Applicant has submitted insufficient medical documentation to refute Dr. Scarpinato's determination that the Assignor's condition had resolved as of the date of her IME on **August 27, 2015** and that no further orthopedic treatment was necessary. Although the initial evaluation and follow-up evaluations from Dr. Sayeedus contain positive findings in the Assignor's neck and back, I find that the credibility of these reports are seriously diminished by the unexplained gap in treatment of more than **five (5) months** between the date of Dr. Scarpinato's IME on **August 27, 2015** and the reports by Dr. Sayeedus dated **February 8, 2016** and later. Moreover, I find that the rebuttal by Dr. Sayeedus is not sufficient to

rebut Dr. Scarpinato's IME since it refers to treatments provided and services performed on February 8, 2016 and later, which is more than five months after Dr. Scarpinato's IME.

Since the applicant failed to rebut the insurer's prima facie showing of lack of medical necessity, Respondent's denials are upheld and the Applicant's claim is denied in its entirety. See Synergy Medical v. Praetorian Insurance Company, 40 Misc.3d 127(A), 2013 N.Y. Slip Op. 51047(U) (App. Term 1st Dept. 2013); Hong Tao Acupuncture, P.C. v. Praetorian Insurance Company, 35 Misc.3d 131(A), 2012 N.Y. Slip Op. 50678(U) (App. Term 2nd, 11th and 13th Jud.Dists. 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 claim is DENIED in its entirety

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

05/08/2017

(Dated)

Mitchell Lustig

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:
8fba6279d1fa93e89656f381ea7f1718

Electronically Signed

Your name: Mitchell Lustig
Signed on: 05/08/2017