

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kissena Medical Imaging PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1031-1932
Applicant's File No.
Insurer's Claim File No. 0528821510101019
NAIC No. 35882

ARBITRATION AWARD

I, Jeffrey Silber, 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 06/21/2017
Declared closed by the arbitrator on 06/21/2017

Theodore Economou, Esq. from Economou & Economou PC participated in person for the Applicant

Alberto DeChavez from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,670.40**, 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 Applicant is entitled to reimbursement for the right shoulder, cervical and lumbar MRIs performed on behalf of the EIP?

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

The EIP, MM, a 38 year old female was involved in a motor vehicle accident on May 13, 2015. The EIP was recommended to undergo a MRI of the right shoulder after an examination by Dr. Sudberg, MD. The cervical and lumbar spine were referred by Dr. Peter Yom, DC. The MRI of the cervical spine was performed on 7/7/15, the MRI of the lumbar spine was performed on 7/14/15 and the MRI of the right shoulder was performed on 7/22/15. Respondent denied reimbursement for the claims based upon the peer review of Dr. Andrew Bazos, MD.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case.

The burden now shifts to respondent to establish a lack of medical necessity with competent medical evidence which sets forth a clear factual basis (specifics of the claim) and medical rationale for denying the claim. *Citywide Social Work and Psych Services, PLLC v. Allstate*, 8 Misc. 3d 1025A (2005); *Healing Hands Chiropractic v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (2004).

In order to satisfy its burden of proof, the respondent must offer sufficient and credible medical evidence that addresses the standards in the applicable medical community for the services and treatment in issue; explains when such services and treatment would be medically appropriate, preferably with an understandable objective criteria; and why it was not medically necessary in the instance at issue.

Medically necessary treatments or services are "treatments or services which are appropriate, suitable, proper and conducive to the end sought by the professional health service in consultation with the patient. It means more than merely convenient or useful treatments or services, but treatments or services that are reasonable in light of the patient's injury subjective and objective evidence of the patient's complaints of pain and the goals of evaluation and treating the patient." *Fifth Avenue Pain Control Center v. Allstate Ins co*, 196 Misc. 2d 801 (Civ. Ct Queens 2003).

The insurer must establish a factual basis and medical rationale for its asserted lack of medical necessity, which is supported by evidence of the generally accepted medical/professional practices. *Beal Medea Products Inc. v. Geico*, 27 Misc. 3d 1218 (A), 910 NYS 2d 760 (Civ. Ct. Kings County 2010). Failing to mention the applicable generally accepted medical/professional standard and the plaintiff's departure from it

denudes the defendant's proof of a prima facie case of lack of medical necessity. *Cambridge Medical, PC v Geico*, 18 Misc. 3d 1144 (A), 859 NYS 2d 893 (Civ. Ct. Richmond County 2008).

In his report, Dr. Bazos listed the medical records reviewed and detailed the EIP's relevant medical history. Dr. Bazos opined that the MRI was not medically necessary because a complete and aggressive course of conservative care had not been tried before ordering the MRI. The EIP's injuries were mild sprain/strains which would resolve through conservative care. MRIs may be necessary later in the course of care where the EIP presents with persistent neurological deficits. The EIP was improving according to the records and there was no medical reason for the spinal MRIs. In reference to MRI study performed to the right shoulder, Dr. Bazos noted that with no evidence of ligamentous instability, bony pathology, significant motor weakness, or the need for immediate surgical intervention, an MRI study was not justified to the area. He said that according to Wolff, et al. in the *Journal of American Academy of Orthopedic Surgeons* 2006, Volume 14, No. 13, pages 715-725, individuals with shoulder pain should attempt a minimum of three months of nonsurgical treatment prior to undergoing any type of advanced diagnostic imaging unless there is indication of significant pathology present upon initial examination. He added that in *Shoulder Complaint Guidelines* published by the American College of Occupational and Environmental Health 2004, it was noted that shoulder MRIs are not recommended without surgical indications.

In the event an insurer's evidence rebuts the inference of medical necessity, by proof in admissible form, establishing that the services were not medically necessary and if such evidence is not refuted by the Applicant such proof may entitle the insurer to judgment in its favor. See *A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Insurance Co.*, Supreme Court, Appellate Term 2nd and 11th Judicial Districts, 2007 NY Slip Op 51342 (U); 16 Misc.3d 131 (A). I find that the peer review of Dr. Bazos establishes a lack of medical necessity which Respondent may rely upon as its defense in denying reimbursement for the claim.

Applicant relied on the medical evidence submitted. The initial examination of Dr. Sudberg and the subsequent re-evaluations by Dr. Sudberg did note positive orthopedic testing of the right shoulder. As for the cervical and lumbar spine MRIs, counsel argues that the referral for the MRIs came from Dr. Yom who is a chiropractor, not a MD. Dr. Bazos does not even discuss the findings of Dr. Yom in his peer review. Counsel argues that Dr. Bazos is the wrong specialty to deny the cervical and lumbar spine MRIs on top of the fact that he does not discuss Dr. Yom's report.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find that the peer reviews presented a sufficient factual basis and medical rationale to support Respondent's defense of a lack of medical necessity for all the right shoulder MRI, which defense Applicant has adequately refuted. I find that I am persuaded by Applicant's argument that Dr. Bazos did not mention any aspect of Dr. Yom's examination in determining that the cervical and lumbar spine MRIs were not medically necessary and the fact that Dr. Yom is a chiropractor and the Respondent

should have had a chiropractor review the medical necessity of the MRIs as they were referred by a chiropractor and each specialty may have a different reason as to why a MRI would be medically necessary. Therefore, Respondent may not rely on the peer review of Dr. Bazos in denying the cervical and lumbar spine MRIs and Applicant is entitled to reimbursement for the same.

Accordingly, for the reasons delineated above, I find in favor of the Applicant and direct the Respondent to issue reimbursement in the full amount, plus interest, an attorney's fee and the arbitration filing fee, as outlined in Sections A through D below. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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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 |
|---------|-----------------------------------|----------------------------|-------------------|----------------------------|
| | Kissena Medical Imaging PC | 07/07/15 - 07/22/15 | \$2,670.40 | Awarded: \$2,670.40 |
| | | | | Awarded: |

| | | |
|--------------|-------------------|-------------------|
| Total | \$2,670.40 | \$2,670.40 |
|--------------|-------------------|-------------------|

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 03/28/2016, which is a relevant date only to the extent set forth below.)

Interest runs from 03/28/16 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

- C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00.

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

06/24/2017
 (Dated)

Jeffrey Silber

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:
d470bb08f8978441c440413c01c691fc

Electronically Signed

Your name: Jeffrey Silber
Signed on: 06/24/2017