

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists LLP
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-15-1021-5719

Applicant's File No. 1785557

Insurer's Claim File No. 0357985316

NAIC No. 19232

ARBITRATION AWARD

I, Ellen Weisman, 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 01/17/2017, 06/30/2017
Declared closed by the arbitrator on 06/30/2017

Stacy Mandel Kaplan, Esq. from Israel, Israel & Purdy, LLP participated in person for the Applicant

Michael Rago, Esq. from Law Office of Karen Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 104.03**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Respondent issued a timely denial and therefore all submissions will be considered.

3. Summary of Issues in Dispute

This arbitration stems from treatment of a 68 year-old male patient who sustained injuries as the driver of a motor vehicle involved in an accident on February 13, 2015. The issue is whether Respondent was justified in terminating this patient's orthopedic

benefits on August 5, 2015, based on the findings reflected in the Independent Medical Examination ("IME") Report of Lisa Nason, M.D. dated July 2, 2015, resulting in denial of Applicant's bill for a spine surgeon consultation on August 25, 2015.

4. Findings, Conclusions, and Basis Therefor

The defense of the cutoff of orthopedic benefits on August 5, 2015, is premised on the IME Report of Dr. Nason dated July 2, 2015.

Applicant's Medical Records:

An Initial Physical Evaluation Report of Ramy E. Hanna, a M.D. dated March 13, 2015, reflects the patient complained of pain in his neck, chest, upper back and lower back. Upon examination, the preliminary impressions included cervical and lumbar spine strains and sprains with possible cervical radiculitis and left sacroilitis, left shoulder strain and bursitis, as well as chest pain with muscle sprain. Physical therapy, massage therapy, cervical MRI study, x-rays, neurological testing, and medical supplies were advised. A cervical MRI report dated March 18, 2015, revealed multiple disc bulges, a disc herniation and a subluxation. He remained symptomatic as of a visit on March 31, 2015, with Ajoy K. Sinha, M.D. and was diagnosed with left shoulder pain and derangement.

The patient was then evaluated by Michael Gorelik, D.C. on April 15, 2015, at which time he complained of radiating neck and low back pain, as well as mid back, upper back, left shoulder and left hip pain with numbness in the left upper and lower extremity. Based upon positive chiropractic examination findings, including sensory deficits, diminished reflexes, hypoesthesia and weakness, as well as decreased range of motion and positive clinical orthopedic testing, the diagnoses included cervicgia, thoracicalgia, lumbago, cervicobrachial syndrome, lumbosacral radiculitis and spasms. He recommended that the patient undergo rehabilitation including chiropractic care.

The patient presented to Andrew J. Cordiale, D.O. on August 25, 2015, complaining of lower back, left shoulder and neck pain. The musculoskeletal examination revealed tenderness, spasms, restricted range of motion, diminished reflexes, and weakness. He diagnosed cervical and lumbar sprains and radiculopathy, and cervical disc herniation with myelopathy. Treatment options were discussed and he was considering neck surgery.

Respondent's IME Report:

Dr. Nason conducted an orthopedic IME on July 2, 2015, at which time the patient presented complaining of cervical spine, left shoulder and lumbar spine pain. Her exam findings were within normal limits with full spinal and left shoulder range of motion without tenderness or spasm, and without impingement sign. Muscle strength and reflexes were normal. The assessment included resolved cervical and lumbar sprains/strains, and resolved left shoulder sprain. She concluded that the patient did not require further treatment.

Arguments of Counsel:

Applicant's counsel argued that Dr. Cordiale reviewed the patient's clinical history and related his injuries to the accident thereby necessitating further treatment. Also, she argued that the diagnoses of resolved sprains/strains rendered by the IME physician are inaccurate since the cervical MRI report reflects significant disc pathology. When the patient presented for further care, he reported neurological deficits including weakness in his hands, and he was referred for this necessary spinal surgical consultation by Dr. Hanna. Respondent's counsel argued that the diagnoses rendered by Dr. Nason provide an accurate clinical picture of his condition on that date. The earlier MRI findings are not relevant to the diagnosis and do not discredit it. He also highlighted the gap in treatment, and argued that the thorough and credible IME Report suffices to sustain the defense.

Findings:

Applicant has established its *prima facie* entitlement to reimbursement for a surgical consultation based on submission of a properly completed claim form setting forth the amount of the loss sustained, and establishing that No-Fault payment is overdue. The denial is found to be sufficient as a matter of law. Therefore, Applicant's burden is also established by submission of sufficient medical records. Ave. T MPC Corp. v. Auto One Ins. Co., 32 Misc.3d 128(A) 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 41292(U), 2011 WL2712964 (App. Term 2d, 11th & 13th Dists., 7/5/2011); Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 782, 774 N.Y.S.2d 564 (2d Dept., 2004), Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co., 2005-1328 K C., 2006 N.Y. Slip Op. 51047U, June 2, 2006.

The burden then shifts to Respondent to establish lack of continuing medical necessity for orthopedic care and thus for the consultation at issue which warrants competent, expert proof in admissible form. Citywide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S. 2d 241, 2004 N.Y. Slip Op. 24034 (Civ. Ct., Kings Co., 2004), *aff'd.*, 8 Misc. 3d 1025 (2005). I find that Respondent's IME Report is sufficient to meet its burden of proof of lack of continuing medical necessity and to rebut Applicant's evidence. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for this office visit by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (*See Insurance Law Section 5102*).

I find further that this burden has not been met by Applicant's medical records or the evidence collectively. Rather, there is no evidence of contemporaneous orthopedic care and there is a significant, unexplained gap in treatment as the patient was evaluated by Dr. Hanna on March 13, 2015, and then was not evaluated by Dr. Cordiale until August

25, 2015, more than five months later. The interim evaluation by the chiropractor does not support the need for continuous orthopedic care. Therefore, I am convinced by the thorough and credible IME Report of Dr. Nason that the patient's musculoskeletal injuries had resolved. As argued by Respondent's counsel, the cervical MRI report was obtained on March 18, 2015, and does not have any bearing on the patient's clinical picture on the date of the IME. Thus, the absence of a contemporaneous exam report by a physiatrist or an orthopedist is fatal to Applicant's claim. Based upon the medical records which are in evidence, there is no basis for continued care and the defense is sustained.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of Respondent and deny this claim in its entirety with prejudice.

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

07/03/2017
(Dated)

Ellen Weisman

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:
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Electronically Signed

Your name: Ellen Weisman
Signed on: 07/03/2017