

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Richard Seldes, M.D.
(Applicant)

- and -

St. Paul Travelers Insurance Co.
(Respondent)

AAA Case No. 17-16-1030-7762

Applicant's File No.

Insurer's Claim File No. HXY1062

NAIC No. 25658

ARBITRATION AWARD

I, Robyn McAllister, 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 06/22/2017
Declared closed by the arbitrator on 06/22/2017

ELVIRA MESSINA, ESQ. from Costella & Gordon LLP participated in person for the Applicant

SHANA KLEINMAN, ESQ. from Law Office of Aloy O. Ibuzor participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 18,560.00**, 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 Respondent properly denied Applicant's claim for performing right knee surgery for Assignor, a 59 year-old female back seat passenger, based on a peer review by Dr. Edward Toriello.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$18,560 for the surgeon's and assistant's fees for performing right knee surgery on November 23, 2015 for Assignor, a 59 year-old female back seat passenger, in connection with treatment of injuries allegedly sustained in a motor vehicle accident on July 5, 2015. Respondent timely denied Applicant's claim predicated on the Workers' Compensation Fee Schedule and a peer review.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. At the hearing, Respondent argued that it properly denied Applicant's claim since the services rendered were not medically necessary. I disagree. I was not persuaded by the peer review report and addendum by Dr. Edward Toriello, submitted by Respondent in support of its denials. Dr. Toriello stated that "the claimant did not sustain any injury to her right knee on 7/5/2015 that would have required surgical intervention. This is based on the MRI of the right knee that was done approximately three weeks after the accident, which revealed advanced degenerative changes in the right knee along with a meniscal tear, which, in my opinion, was chronic and old since there was no evidence of any trauma in the report of the MRI that was done only three weeks after the accident." Dr. Toriello added that "the claimant had no complaints preferable to her right knee when she was seen in the emergency room at Jamaica Hospital at the time of the accident, which is consistent with an old meniscal tear that did not occur acutely at the time of the accident." Dr. Toriello concluded that "for this reason, my opinion is that the surgery was not reasonable, necessary, and related to the accident dated to 7/5/2015."

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial report, follow-up reports, operative report, rebuttal to the peer review and supplemental rebuttal to the addendum to the peer review by Dr. Richard Seldes. I was persuaded by the medical evidence that the right knee surgery was warranted. According to Dr. Seldes' initial report and rebuttal to the peer review, Assignor presented on September 15, 2015 with "severe pain and stiffness" with positive patellofemoral crepitus and positive Apley's grind tests. Dr. Seldes noted that the MRI was consistent with chondromalacia of the patella and deformity of the medial meniscus. Dr. Seldes recommended physical therapy. On follow-up examination on November 12, 2015, Assignor complained of weakness, catching, popping and locking" of the right knee, "which she feels is worsening." Dr. Seldes further noted decreased range of motion, swelling, weakness and positive patellar grind and apprehension tests. Dr. Seldes recommended the surgery due to Assignor failure to respond to conservative treatment. Dr. Seldes further noted that Assignor denied history of pain to the right knee before the accident. Dr. Seldes also pointed out that Dr. Toriello's IME report of indicated that Assignor had objective findings of injury to the right knee in that Dr. Toriello noted decreased range of motion. However, Dr. Toriello's addendum to the peer

review asserted that the decreased motion "limited by pain" was not an objective finding but rather subjective. Dr. Toriello's addendum also asserted that the right knee injury was not "acute." Dr. Seldes supplemental rebuttal to the peer review argued that the reduced range of motion noted by Dr. Toriello was not a subjective finding. Dr. Toriello never addressed whether even if Assignor had degenerative changes in her right knee, the accident could have exacerbated such pathology. Thus, even if Dr. Toriello's peer review was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Toriello's assertion that the surgery was not causally related to the motor vehicle accident. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006). Moreover, the treating physician's opinion should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the surgeon's and assistant's fees for the right knee surgery performed on November 23, 2015.

Finally, I was persuaded by Respondent's fee affidavit by its surgical appeals analyst that the proper fee schedule amount should have been \$6976.10 for the surgeon and \$881.25 for the assistant in accordance with the New Jersey Fee Schedule.

Accordingly, Applicant is awarded \$7857.35 and the remainder of its claim is denied.

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
	Richard Seldes, M.D/Gabriel Samanadarov	11/23/15 - 11/23/15	\$18,560.00	Awarded: \$7,857.35
Total			\$18,560.00	Awarded: \$7,857.35

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 03/23/2016, which is a relevant date only to the extent set forth below.)

Interest shall be computed and paid from March 23, 2016 for the Claim awarded above (\$7857.35) at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee of 20% of the claim awarded above (\$7857.35) plus interest 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, Robyn McAllister, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/22/2017
(Dated)

Robyn McAllister

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:
01908eb1a1633c7fc213ddd1d5093240

Electronically Signed

Your name: Robyn McAllister
Signed on: 07/22/2017