

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Upstate Radiology PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1046-3760

Applicant's File No.

Insurer's Claim File No. 0228686200101063

NAIC No. 22063

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (LK)

1. Hearing(s) held on 10/05/2017
Declared closed by the arbitrator on 10/05/2017

Mark Kosofsky, Esq. from Palumbo & Associates, PC participated in person for the Applicant

Michael Morra, Claims Representative from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,440.15**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the amount at issue to **\$733.04** to reflect the withdrawal, with prejudice, the claim for reimbursement for the cervical spine MRI. The arbitration proceeds with Applicant's claim for reimbursement for the lumbar spine MRI.

Stipulations WERE made by the parties regarding the issues to be determined.

Respondent stipulated to Applicant's prima facie case.

Applicant stipulated to the timeliness of Respondent's denials.

Both parties stipulated that there are no fee schedule issues.

3. Summary of Issues in Dispute

EIP, LK, a 67-year old male, was the driver of a motor vehicle involved in an accident on June 22, 2016. EIP visited the E.R. of Vassar Brothers Medical Center with complaints of head and low back pain. He was evaluated and discharged. EIP subsequently sought medical treatment, and he came under the care of Stephen Angelone, D.C. at Adjust For Life Chiropractic, on June 28, 2016. A course of conservative treatment commenced. An MRI was conducted of EIP's lumbar spine on June 29, 2016.

Respondent issued a denial based upon a peer review by Ronald Csillag, D.C.

The issue in dispute is whether Applicant established entitlement to reimbursement for the MRI of the lumbar spine, denied based on a peer review stating that it was not medically necessary?â

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party, and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

Applicant is seeking reimbursement for an MRI of the lumbar spine conducted on June 29, 2016. Applicant withdrew, with prejudice, that

portion of its claim seeking reimbursement for a cervical spine MRI. As such, this arbitration only involves the medical necessity of the lumbar spine MRI.

EIP, LK, a 67-year old male, was the driver of a motor vehicle involved in an accident on June 22, 2016. EIP visited the E.R. of Vassar Brothers Medical Center with complaints of head and low back pain. He was evaluated and multiple x-rays were performed. X-ray of the lumbar spine revealed multilevel degenerative spondylosis. The examination of the back revealed normal range of motion and normal alignment. There was lumbar tenderness, however, there was no paresthesias, no saddle anesthesia, no foot drop, and no difficulty controlling bowel or bladder. A CT scan of the head/brain revealed no acute intracranial abnormality. EIP was discharged. EIP subsequently sought medical treatment on June 28, 2016 with Stephen Angelone, D.C. at Adjust For Life Chiropractic. He complains of back pain with bilateral paraspinal spasm. Dr. Angelone notes EIP with a history of previous lumbar disc surgery in 2013. Lumbar spine exam reveals restricted ranges of motion, and a positive Adams test and Lasague's test. There was, however, no dermatomal or muscular abnormalities displayed. Chiropractic treatment is recommended, and on the very first visit, Dr. Angelone recommends a lumbar spine MRI, and the following day, on 6/29/16, the MRI is performed.

Applicant's request for reimbursement is denied by Respondent based on the peer review report of Ronald Csillag, D.C.

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). With Applicant establishing 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).

When an insurer relies upon a peer review report to demonstrate that a particular service was not medically necessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. As per the holding in Jacob Nir, M.D. v. Allstate Insurance Co., 7 Misc.3d 544 (2005), the peer reviewer must establish a factual basis and medical rationale to support a finding that the services were not medically necessary, including setting forth generally accepted standards in the medical community. 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).

Respondent's peer review, dated 8/24/16, by Ronald Csillag, D.C., found the lumbar spine MRI was not medically necessary. Dr. Csillag opines that there is no indication as to why Dr. Angelone would recommend a lumbar spine MRI study on the day of his initial evaluation and have the study performed the following day. There are no red flags such as loss of bowel or bladder function, saddle anesthesia or foot drop, which would create the need for an immediate lumbar spine MRI study. Citing medical literature from the American Family Physician, Pompan, D.C., *Appropriate Use of MRI for Evaluating Common Musculoskeletal Conditions*, 2011 Apr 15, musculoskeletal emergencies that require an immediate MRI are limited primarily to spinal conditions such as suspected cauda equine syndrome and infection. There are certain acute neck, back, shoulder, and knee conditions for which MRI should be considered after 4 to 6 weeks of conservative care if the findings could alter treatment. According to an editorial in the American Family Physician, "for most patients with neck, back, knee, or shoulder pain, a diagnosis can be made with a history, physical

examination, and plain film radiography; surgery is not indicated. Neck and back pain have many causes, but the majority of patients will improve with conservative management... MRI often identifies pathology that may have no relationship to a patient's symptoms.

Based upon the foregoing, I find that Respondent has set forth a cogent medical rationale in support of its defense that the lumbar spine MRI was not medically necessary. Accordingly, the burden now shifts to Applicant as to the medical necessity for the MRI.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th Ed]], Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147A, 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131, 824 N.Y.S.2d 759, 2006 NY Slip Op51871(U) (Sup. Ct. App. T. 2d Dep't 2006)].

In opposition to the peer review report of Dr. Csillag, Applicant's counsel relies on submitted medical records, and argues that EIP's history of prior lumbar surgery, establishes the medical necessity for the performance of the lumbar spine MRI soon after EIP's initial evaluation.

After review of the submissions, and consideration of the arguments advanced by the representatives from both parties, I find that Applicant has failed to meet the burden of persuasion in rebuttal. Applicant's submissions do not reflect that Dr. Angelone based his decision for an immediate lumbar spine MRI, due to EIP's history of a prior lumbar surgery. The initial exam report from Dr. Angelone fails to reveal any compelling reason for the recommendation of the MRI at the initial evaluation. I am persuaded by the opinion of Dr. Csillag, and his rationale for said opinion, and find that Applicant has failed to establish the medical necessity for the MRI of the lumbar spine. Applicant's claim is denied.

This decision is in full disposition of all claims for no-fault benefits presently before this arbitrator.

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

11/01/2017
(Dated)

Nicholas Tafuri

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:

de2a9461bda1de8ea057976f98b2982b

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 11/01/2017