

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Westchester Radiology & Imaging, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-17-1061-2808
Applicant's File No.	None
Insurer's Claim File No.	0395458460101036
NAIC No.	35882

ARBITRATION AWARD

I, Rhonda Barry, 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 02/16/2018
Declared closed by the arbitrator on 02/16/2018

Matthew Viverito, Esq. from Costella & Gordon LLP participated in person for the Applicant

Alison Chulis, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 809.22**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the denial was timely.

3. Summary of Issues in Dispute

Did Respondent properly and timely deny Applicant's claim for reimbursement for a cervical MRI based upon lack of medical necessity pursuant to peer review?

4. Findings, Conclusions, and Basis Therefor

The EIP is a 58 year old male injured as a restrained driver in a motor vehicle accident on 2/11/16. There was no loss of consciousness. The EIP presented to a hospital, was treated and released. Applicant seeks \$809.22 for an MRI of the cervical spine on DOS 3/4/16. Respondent denied applicant's claim based upon lack of medical necessity according to the peer review of Ralph Della Ratta, MD. Applicant submits records from the EIP's treating/referring physician Rockwood Medical Health, PC.

I have completely reviewed all timely submitted documents contained in the ADR Center record maintained by the American Arbitration Association and considered all oral arguments. No additional documents were submitted by either party at hearing. No witnesses testified at hearing.

ANALYSIS

Applicant has established its prima facie entitlement to reimbursement for no fault benefits based upon the submission of a properly completed claim form setting forth the amount of the loss sustained and that payment is overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD 3d 742, (2nd Dept. 2004). Westchester Medical Center v. Lincoln General Ins Co, 60 AD 3d 1045 (2nd Dept. 2009).

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). 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 understandable objective criteria; and why it was not medically necessary in the instance at issue.

A no-fault insurer defending a denial of first party benefits on the ground that the billed for services were not medically necessary must at least show that the services were inconsistent with generally accepted medical/professional practice. See, Williambridge Radiology and Open Imaging v. Travelers Indemnity Company, 14 Misc. 3d 1231 (A), 836 NYS 2d 496. 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).

I find Respondent's peer report credible. Respondent has sufficiently satisfied its burden of proof of lack of medical necessity for the MRI at issue. The peer report herein sets forth a factual basis and medical rationale for the services at issue. AJS Chiropractic, PC v. Mercury Ins. Co, 22 Misc. 3d 133 (A), 880 NYS 2d 871 (App. Term 2d & 11th Jud Dist. 2009). Dr. Della Ratta reviewed and considered extensive medical records and determined that there was no evidence of medical necessity for the cervical MRI.

At the time of the 2/22/16 evaluation at Rockwood Medical Health, PC a pain scale was not documented. There is no indication that the EIP took any medication. Neurological examination including reflexes, muscle strength and sensation were normal. Examination of the cervical spine revealed decreased range of motion, spasm and a positive Spurling test.

Citing to medical authority Dr. Della Ratta opines that in the absence of red flags for signs of myelopathy and MRI of the cervical spine is appropriate for those patients who remained symptomatic after 6 weeks of conservative care. It is a deviation from generally accepted medical practice to refer an EIP for early cervical spine MRI unless interventional therapy such as epidural injection or surgery was contemplating. That was not the case for this EIP. Further, the fact that there may be positive results is not a justification for the study in and of itself. Asymptomatic individuals are frequently found to have abnormalities.

Dr. Della Ratta provided a highly detailed standard of generally accepted medical practice for performing the MRI. See, Williambridge Radiology and Open Imaging v. Travelers Indemnity Company, 14 Misc. 3d 1231 (A), 836 NYS 2d 496 Further Dr. Della Ratta's report successfully correlates the medical necessity of the MRI to this EIP. See, James Ligouri Physician, PC v. State Farm Mutual Automobile Insurance Company, 2007 NY Slip op 50465 (U) (New York District Court 2007).

Respondent established a reasonable factual basis and medical rationale with its expert opinion as to the medical necessity for the disputed treatment. Applicant must now meaningfully refer to or rebut the conclusions set forth in the peer review. Yklik, Inc v. Geico Ins Co, 2010 NY Slip Op 51336(u) (App Term 2nd, 11th and 13th Jud Dist. 7/22/10). In the absence of such a rebuttal, the claim may be denied. A. Khodadadi Radiology, PC v. NY Cent Mut Ins Co, 16 Misc. 3d 131 (A), 2007 NY Slip Op 51342[U] (App term 2nd and 11th Jud Dist. 2007).

To determine whether a reasonably prudent doctor exercising his or her best judgment would have ordered an... MRI, the court must consider factors such as who ordered the test, when was the test ordered, what were the patient's complaints and symptoms when the test was ordered, what treatment was the patient receiving, how was the patient responding to that treatment, how much time had elapsed between the time the injury or condition was diagnosed and the time the test was ordered, what was the diagnosis made by the medical provider who ordered the test, was the test needed for diagnosis and/or to determine appropriate treatment and/or would the results of the test change or affected treatment. All County LLC v. Tri-State Consumer Insurance Company, 34 Misc. 3d 1216(A), 950 NYS 2d 490 (District Ct. Nassau County Fred J Hirsh, J, 2012).

Applicant failed to submit any medical evidence or contemporaneous medical records sufficient to rebut Respondent's showing of lack of medical necessity. Pan Chiropractic, PC v. Mercury Insurance Co, 24 Misc. 3d 136 (A) (App. Term 2d, 11th and 13th Jud Dist. 2009). As such its claim must fail. Delta Diagnostic Radiology, PC v. American Transit Ins Co, 18 Misc. 3d 128(A) (Ap.p Term 2d and 11th Jud Dist. 2007). There was no basis for further testing at this early stage in the EIP's care.

The examination at Rockwood Medical Health, PC essentially revealed a soft tissue injury without positive neurological findings.

There is nothing in the medical records to suggest that the EIP was a candidate for MRI at this time. There are virtually no objective findings sufficiently credible to justify the use MRIs at this stage. A no fault insurer has a strong argument that MRIs were premature and unnecessary when performed within a few days after the accident and/or closely after the initial evaluation. Elmont Open MRI and Diagnostic Radiology, PC v. State Farm Auto Ins. Co., 26 Misc. 3d 1221(A), 90 NYS 2d 99 (Dist. Ct Nassau Cty. 2010).

I find for respondent and the 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 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, Rhonda Barry, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/20/2018
(Dated)

Rhonda Barry

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:
9988107de2da2c0c6fa71d96af9a0552

Electronically Signed

Your name: Rhonda Barry
Signed on: 02/20/2018