

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Long Island Jewish Medical Center (NSUH) (Applicant)	AAA Case No.	17-17-1054-9191
	Applicant's File No.	RFA17-195419
- and -	Insurer's Claim File No.	32-0P71-268
State Farm Mutual Automobile Insurance Company (Respondent)	NAIC No.	25178

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 03/07/2018, 04/12/2018
Declared closed by the arbitrator on 04/12/2018

Emily Bennett, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Scott Schwaber, Esq. from Nicolini, Paradise, Ferretti, Sabella participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ **15,397.51**, was AMENDED and permitted by the arbitrator at the oral hearing.

Claim was amended to the fee schedule amount of \$3,060.56

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether the 2016 left shoulder surgery was casually related to the 2012 MVA?

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the 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, GG, a 51 year old male was involved in a motor vehicle accident on January 13, 2012. The EIP was treated for his injuries related to the MVA. The EIP subsequently underwent left shoulder arthroscopic surgery on 6/27/16. Respondent denied payment based upon the peer review of Dr. Thomas Nipper, MD for the surgery itself and all related medical services.

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).

Respondent timely denied the claim based upon the peer review by Dr. Thomas Nipper, M.D. After reviewing the EIP's history, treatment, and medical records, Dr. Nipper states that there was no acute injury noted to the shoulder. Dr. Nipper did perform an IME of the EIP on 5/3/12. At the time of the IME, Dr. Nipper diagnosed the EIP with a resolved sprain/strain of the left shoulder. Dr. Nipper states that the MRI of the left shoulder indicated that there was no rotator cuff tear with mild AC joint arthrosis. Dr. Ticker evaluated the EIP over 4 years after the accident. The surgery performed on 6/27/16 was not causally related to the accident of record.

After careful review of the evidence, I find that the peer review of Dr. Nipper is sufficient to substantiate Respondent's lack of medical necessity defense regarding Applicant's claim. There are no records for the past 4 years post the IME of Dr. Nipper. The MRI referred to by Dr. Ticker that is suggestive of a SLAP tear was performed on 5/8/16, 4 years post-IME. The medical reports submitted are from the later part of 2013. There is nothing to indicate that the left shoulder injury in 2016 is a direct result of the 2012 accident.

Without any evidence to prove that the 2016 surgery is related to the 2012 accident, where the medical records submitted suggest that the left shoulder injury was a sprain/strain and the MRI in 2013 did not reveal a rotator cuff tear, the claim is denied as not being casually related to the accident.

Denial is sustained.

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, 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.

04/22/2018

(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:
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Electronically Signed

Your name: Jeffrey Silber
Signed on: 04/22/2018