American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Quality Laboratory Service (Applicant)	AAA Case No.	17-18-1091-4695
	Applicant's File No.	TM-18-2688
- and -	Insurer's Claim File No.	461763625
	NAIC No.	19232
Allstate Property and Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Alana Barran, 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 05/02/2019
   Declared closed by the arbitrator on 05/02/2019

   Cliff Ryan from Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP participated in person for the Applicant

   Megan McDonough from Law Offices of John Trop participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,162.14**, 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
   The patient, OC, is a 56 year old male that was involved in an accident on 6/27/17. This is a claim for drug testing provided on 10/19/17 to the patient. The Respondent denied the claim based on the peer review of Dr. Glenn Babus; and raised a fee schedule defense. The issue raised is whether the services were medically necessary; and whether the Respondent has sustained its fee schedule defense.

4. Findings, Conclusions, and Basis Therefor
   My decision is based on the arguments of the representatives for parties appearing and those documents contained in the ADR Center for this case.

The Respondent relied on the peer review of Dr. Glenn Babus on 12/19/17 in denying the bill at issue for lack of medical necessity. Dr. Glenn Babus reviewed medical records. He states that there was no initiation of opioid therapy by the patient and therefore the drug testing was not medically necessary. He concludes that the testing was not medically necessary. I find the peer review to be persuasive and sufficient to meet the Respondent's burden of proof to sustain its defense of lack of medical necessity.

The records in submission include drug test report; soap note 10/18/17; evaluation dated 10/17/18 stating no allergies and cream medication and "monitored anesthesia care, patient is nervous and and *may*require IV sedation, 8/23/17, 7/19/17. I find the records in submission do not meaningfully address the findings of the peer review and to be unpersuasive and insufficient to rebut the findings of the peer review doctor.

The applicant has established its initial entitlement to no fault benefits. The burden then shifts to the respondent. The respondent's denial for lack of medical necessity must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc. 3d 975; Citywide Social Work, et. al v. Travelers Indemnity Co., 3 Misc. 3d 608. The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment,Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 2009 NY Slip Op 00351 (App Div. 2d Dept., Jan. 20, 2009); Channel Chiropractic, P.C. v. Country-Wide Ins. Co., 2007 Slip Op 01973, 38 A.D.3d 294 (1st Dept. 2007); Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 2007 NY Slip Op 27427, 17 Misc.3d 97 (App Term 1st Dept., 2007). Here, the Respondent has met its burden of proof to sustain its defense of lack of medical necessity.

In order for an applicant to prove that the disputed expense was medically necessary, it must 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 2d, 11th & 13th Dists. July 22, 2010); High Quality Medical, P.C. v. Mercury Ins. Co., 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co.,24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009). Here, I find that the records in submission are insufficient to rebut the findings of the peer review doctor.

I find that the peer review of Dr. Glenn Babus has set forth a sufficient factual basis and medical rationale for his opinion that the disputed services were not medically necessary and therefore has established, *prima facie*, a lack of medical necessity for those services rendered by applicant. The burden has shifted to the Applicant and has not been rebutted.

Comparing the relevant evidence presented by both parties against each other and the above referenced standards, I find the proof presented by the Respondent to be persuasive and sufficient to meet its burden of proof. Therefore, I find in favor of the Respondent and the claim is denied.

Based on the foregoing, I find the Respondent's defense based on the fee schedule to be moot.

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

05/28/2019
(Dated)

Alana Barran

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:
456dc0cec76f1c13f6c03ba618f80305

Electronically Signed

Your name: Alana Barran
Signed on: 05/28/2019