American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All County LLC (Applicant)	AAA Case No.	17-17-1070-3759
	Applicant's File No.	RFA15-181826
- and -	Insurer's Claim File No.	LA000-029623034-01
	NAIC No.	36447
Liberty Mutual Insurance Company (Respondent)		

ARBITRATION AWARD

I, Susan Haskel, 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 06/12/2019
   Declared closed by the arbitrator on 06/12/2019

   Andrew Bruskin, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

   Melissa Coppola from Liberty Mutual Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 879.73**, 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

   Background

   On April 30, 2014, EIP was a then 36-year-old woman involved in a motor vehicle accident. Following the accident, EIP complained of pain in the neck. EIP sought and received treatment including the subject MRI study of the cervical spine performed on May 28, 2014. Applicant billed Respondent for charges related to the study and Respondent denied the charges, raising defenses of lack of medical necessity based upon a peer review by Frida Goldin, M.D.

Issue Presented

Per the parties, the sole issue in dispute is whether the MRI study was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This award was decided on the basis of the documents submitted by the parties and the arguments raised at the hearing.

Peer Review

Per Dr. Goldin, the MRI was not medically indicated because, in pertinent part, there was no evidence that EIP's condition was deteriorating; there was no diagnosis to rule out, and there was no explanation as to how the results of the testing would impact treatment. Dr. Goldin notes that the section of history and reason for the exam on the referral sheet were left blank.

Rebuttal

In response to the peer review, Applicant provided a rebuttal by Drora Hirsch, M.D. In her rebuttal, in pertinent part, Dr. Hirsch indicates that here, EIP was injured in a traumatic accident, following which the MRIs were needed to explore the biological component of pain and to visualize damage. She notes that EIP had numerous positive findings on evaluation along with complaints of neck pain, which indicated possible nerve root involvement and radiculopathy and suggested that there may be a need for surgery later in treatment. Dr. Hirsch urges deference to the treating provider's determination that the imaging was appropriate.

Addendum

The addendum addresses the points raised in the rebuttal and reiterates that here, the signs and symptoms did not meet the standard of care articulated in the peer report, viz., there were no red flag findings here nor were there progressive neurological deficits.

Analysis

As Applicant made a prima facie showing of entitlement to payment, the burden shifted to Respondent to prove its defense that services were not medically necessary. A.B. Medical Servs., PLLC v. Lumbermens Mut. Cas. Co., 4 Misc.3d 86, 87 (App. Term, 2nd Dep't 2004); King's Med. Supply, Inc. v. Country-Wide Ins. Co., 5 Misc.3d 767, 771 (Civ. Ct. Kings Co. 2004); Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A) (App Term 2nd and 11th Jud. Dists. 2003). To establish lack of medical necessity through a peer review report, the peer reviewer's opinion must set forth a

factual basis and medical rationale for the lack of medical necessity defense, including evidence of medical standards. Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 546-47 (Civ. Ct. Kings Co. 2005).

I find that the peer review set forth a factual basis and medical rationale by indicating that the testing was not indicated based upon EIP's signs and symptoms during the relevant time. As such, the burden shifted to Applicant. See West Tremont Med. Diagnostic, P.C. v. GEICO Ins. Co., 13 Misc.3d 131(A), 824 N.Y.S.2d 759 (App. Term 2d & 11th Jud. Dists. 2006); Andrew Carothers, M.D., P.C. v GEICO Indem. Co., 20 Misc. 3d 1137(A), 867 N.Y.S.2d 372 (Civ. Ct. Kings Co. 2008). While Dr. Hirsch's rebuttal does indicate that the MRI was needed to guide the treatment plan and/or render a diagnosis in this case, I am not convinced by Applicant that the MRI was needed at the specific time it was ordered and provided. Dr. Hirsch's contention that the MRI study was needed to guide treatment is belied by the fact that treatment was already underway, but a full course had not yet been completed at the time of referral. There is no meaningful indication within the records submitted that continuation of conservative care was contingent on MRI results. To the contrary, I find that I am persuaded by Respondent that EIP's signs and symptoms at the time the MRI was prescribed (May 1, 2014) and performed (May 28, 2014) did not indicate the testing. As such, and upon a preponderance of the evidence and following consideration of the arguments raised at the hearing, I find that Respondent established its defense. The claim is hereby 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, Susan Haskel, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/04/2019
(Dated)

Susan Haskel

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:
8b4410e385271b57123db54b9e21c2fc

Electronically Signed

Your name: Susan Haskel
Signed on: 07/04/2019