American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-17-1077-0220
	Applicant's File No.	2028634
- and -	Insurer's Claim File No.	01-070892 PIP01
Tri-State Consumer Insurance Company (Respondent)	NAIC No.	23060

ARBITRATION AWARD

I, Anne Malone, 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 07/31/2019
   Declared closed by the arbitrator on 07/31/2019

   Vijay Gupta, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

   Joseph Armao, Esq. from Tri-State Consumer Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 236.94**, 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 EIP was allegedly involved in a motor vehicle accident on August 18, 2015. She reported injury to her head, neck, mid and low back, right shoulder, elbow, wrist, knee, hip, ankle and foot. She received an office visit provided by the applicant on September 12, 2017.

   The applicant submitted a bill for these medical services, payment of which was denied by the respondent based on the IME of the EIP by Richard Weiss, M.D. which was performed on February 17, 2016. The IME cut-off was effective on March 2, 2016.

The issue to be determined at the hearing is whether the medical services provided by the applicant were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

The respondent denied payment for the aforementioned services as not medically necessary.

In order to support a lack of medical necessity respondent must "set forth a factual basis and medical rationale for the IME doctor's determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005).

To support its contention that the medical services provided to the EIP were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Weiss, which was objectively negative and unremarkable. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Weiss performed a complete and comprehensive examination of the EIP which identified a mild diminution in flexion of the right knee, which he determined was not substantiated by objective findings and ranges of motion displayed were compatible with normal function. There were no objective positive findings and he determined that her injuries were resolved. Range of motion was determined with the assistance of a goniometer.

Based upon the physical examination and medical records reviewed, Dr. Weiss determined that despite her subjective complaints, the EIP was not disabled and that she

could perform her activities of daily living and working without any limitations. It was Dr. Weiss' opinion that there was no medical necessity for further orthopedic treatment, physical therapy, massage therapy, surgery, prescription medication, pain management, injections, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the medical services at issue were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

In response to the report of the physical examination of the EIP by Dr. Weiss, the applicant relied upon the submissions, which failed to document sufficient contemporaneous objective findings that would warrant continued treatment after the IME cut-off date.

A review of the applicant's submissions reveals that it has not met the burden of persuasion in rebuttal. The medical records submitted in opposition to the findings of Dr. Weiss are insufficient to overcome the burden of production established by respondent.

Under these circumstances, the respondent has established that the post-IME treatment at issue was not medically necessary.

Therefore the claim is dismissed with prejudice.

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

08/09/2019
(Dated)

Anne Malone

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:
04a381e7424ca5165801f2cae1f5c62e

Electronically Signed

Your name: Anne Malone
Signed on: 08/09/2019