American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1085-3650
	Applicant's File No.	2064708
- and -	Insurer's Claim File No.	0559937790101016
	NAIC No.	14138
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Gregory Watford, 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: Assignor (NC)

1. Hearing(s) held on 09/03/2019
   Declared closed by the arbitrator on 09/03/2019

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

   Lauren Gallo, Esq. from Geico 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 dispute arises from the underlying automobile accident of April 29, 2017, in which Assignor, a 39 year old male, was a driver. He subsequently went to Brooklyn Hospital where he was treated and released. As a result of the impact, he complained of pain in his neck, lower back and left shoulder. Thereafter, he sought private medical attention where he was evaluated and diagnosed with myofascial derangement of the cervical and lumbar spine, left shoulder derangement, post traumatic headaches and tinnitus in his left ear. He was recommended to begin a course of conservative care treatments including physical therapy and referred for diagnostic testing.

On August 17, 2017, Assignor underwent a Physical Medicine & Rehabilitation independent medical examination (IME) conducted by Dr. J. F. Kalangie who determined that Assignor's injuries had fully resolved. On that same date, Assignor also underwent an orthopedic independent medical examination (IME) conducted by Dr. Andre Miller who also determined that Assignor's injuries had fully resolved. As result of the IMEs, Respondent cut of no fault benefits effective August 30, 3017.

December 19, 2017, Assignor had an initial office visit at Applicant's office. Applicant submitted the bill to Respondent in the amount of $236.94. Respondent denied payment based upon the IMEs.

The issues to be decided in this case are:

Whether Applicant established entitlement to No-Fault compensation for an office visit provided to Assignor;

Whether Respondent made out a prima facie case of lack of medical necessity and, if so, whether Applicant rebutted it.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). These submissions constitute the record in this case. After reviewing the records pertaining to the chiropractic treatments, I find that Applicant established its prima facie case of entitlement to No-Fault compensation. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (N.Y. App. Div. 2nd Dept. 2004). Since Respondent's denials were timely, it was within its rights to assert that further treatment was medically unnecessary. Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co., 2002 NY Slip Op 40420(U), 2002 WL 31108069 (N.Y. App. Term 2nd & 11th Dists. June 27, 2002); cf. Country-Wide Insurance Co. v. Zablozki, 257 A.D.2d 506, 684 N.Y.S.2d 229 (N.Y. App. Div. 1st Dept. 1999).

A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. See, Amaze Med. Supply Inc. v Eagle Ins. Co., 2 Misc 3d 128[A], 2003 NY Slip Op 51701[U] [N.Y. App Term, 2nd & 11th Jud Dists 2003]; King's Med. Supply Inc. v Country-Wide Ins. Co., 5 Misc 3d 767, 771 (Civ. Ct Kings Cty 2004).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

If he does so, it becomes incumbent on the claimant to rebut the IME review, see AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), 2009 NY Slip Op 50208(U), 2009 WL 323421 (N.Y. App. Term 2nd & 11th Dist. Feb. 9, 2002), because the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Shtarkman v. Allstate Insurance Co., 2002 NY Slip Op 50568(U), 2002 WL 32001277 (N.Y. App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance company). The insured or the provider bears the burden of persuasion on the question of medical necessity. Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 NY Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). This burden of proof is properly placed on a claimant health care provider because presumably it is in possession of the injured party's medical records.

This arbitrator previously addressed the IMEs in this case regarding this Assignor in a linked case under AAA case # 17-18-1095-5320. In that case, addressing the medical necessity of a post IME CT scan provided to Assignor on 3/20/18, I upheld Respondent's denial based upon the IMEs of Dr. Miller and Dr. Kalangie.

In that case, this arbitrator opined:

"Applicant has not submitted a rebuttal for consideration and relied upon the submissions contained in the ECF. Applicant's counsel argued that the radiology scans were for comparison purposes with his prior CT scan on June 13, 2017. Additionally, Applicant's counsel argued that the IMEs contradict each other in that Dr. Kalangie stated that range of motion in the cervical and lumbar spine were normal while Dr. Miller noted reduced range of motion on all planes. Therefore, the IME's are not credible proof that Assignor's injuries had not fully resolved at the time of the IME.

It should be noted that although Assignor had reduced range of motion in Dr. Miller's IME, all other tests were normal and there were no complaints of pain noted during the IME. Both Dr. Miller and Kalangie noted that Assignor had complaints of pain however, during the examination there were no spasms or tenderness noted.

Comparing the relevant evidence and arguments presented by both parties against each other, I am persuaded by the Respondent's arguments and evidence. I am not persuaded that Applicant has sufficiently rebutted Respondent's proof that the CT scan of Assignor's lumbar was medically necessary. A review of the ECF for this case revealed that the last evaluation of assignor was in June 2017 which was pre-IME. There are no additional evaluations or physical examinations of Assignor in the ECF which are contemporaneous to the IME. Moreover, there are no credible documents which established the reason for the CT scans seven (7) months post IME. The last treatment notes in the ECF for treatment of Assignor's injuries are dated June 2017 which is nine (9) months prior to the March 2018 CT scan. I find that based upon the records before this arbitrator in the instant matter there is a significant gap in treatment which, without medical documents to explain why the test was ordered, cannot justify the medical necessity of the 3/20/18 lumbar CT scan. Accordingly, Applicant's claim is denied."

In the instant case, Applicant has not submitted any new facts or evidence that would make this arbitrator re-consider my findings of fact and conclusions of law. Moreover, the linked award has not been vacated. Therefore, I adopt my findings of facts and conclusions of law from the linked case and apply them to the instant matter.

Therefore, I find in favor or Respondent. Accordingly, Applicants claim is denied in its entirety.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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

10/01/2019
(Dated)

Gregory Watford

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:
50991eb2b8f3661b1c3811fb80f57e99

Electronically Signed

Your name: Gregory Watford
Signed on: 10/01/2019