American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1095-2980
	Applicant's File No.	2108987
- and -	Insurer's Claim File No.	2165221
	NAIC No.	12504
Ameriprise Insurance Company (Respondent)		

ARBITRATION AWARD

I, Jennifer Frankola, 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: Eligible Injured Party/EIP

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

   S. Mandel Kaplan, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

   C. McCarthy, Esq. from Bruno Gerbino & Soriano LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 277.07**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulate to:

1. Applicant has met its prima facie burden;

2. The denials are timely;

3. The issue presented is whether or not the services are medically necessary;

4. Applicant seeks reimbursement for $277.07 for a follow up office visit and x-rays on 4/11/18.

5. Respondent timely denied the services based upon an IME by Dr. John Denton, MD, dated 10/2/17;

6. Applicant submits a rebuttal by Dr. Lattuga, the treating surgeon, dated 8/21/19

7. Interest runs from 5/18/18.

3. Summary of Issues in Dispute

This arbitration arises out of medical treatment for the Eligible Injured Party (EIP), a 63 year old female seat belted front seat passenger who was involved in a motor vehicle accident on 5/9/16.

I have reviewed the documents contained in the Electronic Case Folder as of the date of the Hearing and this Award is based upon my review of the Record and the oral arguments made by the representatives of the parties at the Hearing. No witnesses were present.

4. Findings, Conclusions, and Basis Therefor

Upon proof of a prima facie case by the Applicant, the burden shifts to the Respondent-insurer to prove that the services were not medically necessary. A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App.Term 2nd and 11th Jud. Dists. 2004); Kings Medical Supply, Inc. v. Country-Wide Insurance Company, 5 Misc.3d 767, 2004 N.Y. Slip Op. 24394 (N.Y. Civ. Ct. Kings Co. 2004); Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc.3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App Term 2nd and 11th Jud. Dists. 2003).

The purpose of an IME is to permit the insurer to verify the person's injuries, to determine the injured party's condition and to determine if the injured party needs any additional treatment or testing for those conditions and injuries. (See, Mangione v Jacobs, 37 Misc 3d 711 [Sup Ct, Queens County 2012].) In no-fault cases, the purpose of the IME is to assist the carrier in determining the extent of the injured party's disability and that person's need for additional and continued benefits. (See Rowe v Wahnow, 26 Misc 3d 8, 10 [App Term, 1st Dept 2009, McKeon, P.J., dissenting].) Thus, the purpose of an IME is not to determine whether coverage exists, but is to permit the insurer to determine the nature and extent of the injured party's injuries, whether the injured party needs additional treatment or testing for those injuries and for how much longer such treatment might be needed. See, Boulevard Multispec Medical, P.C. v. Tri-State Consumer Ins. Co., 43 Misc.3d 802, 805, 982 N.Y.S.2d 864, 867 (Dist. Ct. Nassau Co. 2014).

An IME is a snapshot of the injured party's medical condition as of the date of the IME. It is the opinion of the doctor that based upon the claimant's complaints and the doctor's objective findings at the time the IME is performed the claimant no longer needs medical care or treatment and/or diagnostic testing. The determination that the claimant no longer needs treatment is generally based upon the examining doctor's findings which result in the doctor concluding (1) the claimant has fully recovered from the injuries; (2) the claimant has made as full a recovery as is possible taking into account the nature and extent of the injuries, the claimant's age, preexisting conditions or other factors; and/or (3) additional treatment or testing will not provide any medical benefit to the claimant. See, Amato v. State Farm Ins. Co., 30 Misc.3d 238, 910 N.Y.S.2d 637 (Dist. Ct. Nassau Co. 2010), rev'd on other grounds, 40 Misc.3d 129(A), 975 N.Y.S.2d 364 (Table), 2013 N.Y. Slip Op. 51113(U), 2013 WL 3497906 (App. Term 9th & 10th Dists. July 3, 2013).

Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the provider fails to present any evidence to refute that showing, the claim should be denied. AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), 880 N.Y.S.2d 871 (Table), 2009 N.Y. Slip Op. 50208(U), 2009 WL 323421 (App. Term 2d & 11th Dist. Feb. 9, 2009).

Here, Respondent submits the IME by Dr. Denton. The IME states that all testing and ROM are normal and negative; all diagnoses were resolved. There was no further need for PT, OT or massage therapy and prescribes follow ups for orthopedic treatment and states that a re-evaluation would be reasonable.

I note that Dr. Denton agreed with Dr. Westerband's Peer Review, which, according to other arbitrations related to this EIP and MVA, was found to be insufficient. Additionally, other arbitrators found that this EIP requires surgery. Applicant submits a formal rebuttal by Dr. Lattuga, the treating surgeon. I find this rebuttal sufficiently rebuts the Peer Review. I have reviewed the addendum by Dr. Denton dated 8/22/19 and find it insufficient to rebut the rebuttal.

Therefore, Applicant's request is granted.

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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Total**	**Status**
	New York Spine Specialists LLP	**04/11/18 - 04/11/18**	**$277.07**	**$ 277.07**	**Awarded: $277.07**
Total			**$277.07**	**Awarded: $277.07**	

B. The insurer shall also compute and pay the applicant interest set forth below. 05/18/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant's award shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30-day month from the date that Applicant initiatedarbitration to the date of the payment of the award pursuant to 11 NYCRR 65-3.9 (a) and LMK Psychological Servs. P.C. v. State Farm Mut. Auto Ins. Co, 12 N.Y.3d 217, 906 N.E.2d 1046, 879 N.Y.S.2d 14, 2009 N.Y. Slip Op. 02481, (N.Y. Ct. of Appeals, April 02, 2009) since Applicant did not commence this Arbitration proceeding within 30-days after its receipt of the subject denial(s).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)."

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of Queens

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

10/03/2019
(Dated)

Jennifer Frankola

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:
2b904fe0f7a3dfda4414e5c73320c4d2

Electronically Signed

Your name: Jennifer Frankola
Signed on: 10/03/2019