American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1093-5134
	Applicant's File No.	2093186
- and -	Insurer's Claim File No.	0474268711 2KJ
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Jeffrey Silber, 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 12/04/2019
   Declared closed by the arbitrator on 12/04/2019

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

   Peter Graziosi, Esq. from Law Offices Of Karen L Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 241.67**, 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

   Whether the continued medical care of the EIP from 3/6/18 through 4/5/18 was medically necessary?

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

The EIP, YB, a 44-year-old male was involved in a motor vehicle accident on September 3, 2017. The Applicant seeks reimbursement for medical treatment provided to the EIP from 3/6/18 through 4/5/18. Respondent denied the claims based upon the IME of Dr. J. Serge Parisien, MD.

It is well settled that a health care provider establishes a prima facie case of entitlement to recover first-party no-fault benefits by proof that it submitted claims setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. (see Insurance Law Sec. 5106[a]; Mary Immaculate Hosp v. Allstate Ins. Co., 5 AD3d 742 [2004]. The evidence is sufficient to make out a prima facie case of entitlement to recovery of Applicant's bills.

The record indicates that the Respondent received the claims and issued N F- 10 denial of claim forms for these claims. Upon reviewing the evidence contained in the record herein, and the parties' arguments, I find the Applicant submitted sufficient credible evidence to establish a prima facie case.

Once Applicant has established a prima facie case the burden shifts to the insurer to prove that the medical treatment was not medically necessary (see Citywide Social Work & Psychological Services v Allstate Ins. Co., 8 Misc3d 1025A; A.B. Medical Services, v Geico Ins. Co., 2 Misc3d 26). Neither the Insurance Law nor the Regulations define "medical necessity." A review of case law reveals that most courts have evaluated medical necessity based on whether or not services provided were in accord with the generally accepted medical practices. Therefore, to prove that the services were not medically necessary, at a minimum, lack of necessity must be supported by competent evidence such as an IME. An IME report must set forth a factual basis and medical rationale for the conclusion that that further services are not medically necessary. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y.Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

An IME report represents a snap shot of a patient's condition on a particular date. See Amato v. State Farm Insurance Co., 30 Misc3d 637 (District Court Nassau Ct. 2010); Elmont Open MRI v. Progressive Insurance Co., 26 Misc3d 1211(a) (Dist Ct. Nassau Ct. 2009). An insurance carrier must, at a minimum, establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity. Vladimir Zlatnick, M.D., P.C. v. Travelers Indem. Co., 2006 NY Slip Op 50963(U) (App Term 1st Dept., 2006); Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 2008 Slip Op 52450(U), 21 Misc.3d142(A) (App Term 2d Dept., 2008).

Dr. Parisien, on November 30, 2017, examined the EIP at the request of the Respondent. Dr. Parisien reviewed the EIP's relevant medical records and conducted a thorough

examination after which he determined that the EIP did not need any further medical treatments as a result of the injuries sustained in the MVA. Dr. Parisien does provide the normal range of motion for the cervical and lumbar spine. All were within normal limits and without tenderness or spasms. All orthopedic testing was negative.

There are no contemporaneous medical records submitted with the IME. The only records submitted by the Applicant is the examination on 3/6/18 by Dr. Cordiale.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find that the IME reports presents a sufficient factual basis and medical rationale to support Respondent's defense of a lack of medical necessity, which defense Applicant has failed to adequately refute.

Respondent's denial is sustained and the Applicant's claim is denied in its entirety.

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

12/04/2019
(Dated)

Jeffrey Silber

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:
71df46b40116e8b9cb5469b30743715a

Electronically Signed

Your name: Jeffrey Silber
Signed on: 12/04/2019