

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tim Canty M.D. PLLC , NY Ambulatory &
Anesthesia, P.C.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No.	17-19-1151-3448
Applicant's File No.	A22600, A24895
Insurer's Claim File No.	1027179-01
NAIC No.	16616

ARBITRATION AWARD

I, Michael Resko, 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: Claimant

1. Hearing(s) held on 07/29/2020
Declared closed by the arbitrator on 07/29/2020

Ashley Andrews-Santillo Esq. from Munawar & Hashmat LLP participated by telephone for the Applicant

Jack Hessel Esq. from American Transit Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,614.28**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the total amount in dispute to **\$3,011.96**.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated and agreed that (i) Applicant has met its *prima facie* burden by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim was mailed to and received by Respondent; (ii) Respondent's denials of the subject claims were timely issued; and (iii) the *amended* amount claimed does not exceed the maximum permissible charges under the fee schedule applicable to the disputed services.

3. Summary of Issues in Dispute

This case was filed on behalf of two (2) different providers. Applicant Tim Canty MD, PLLC ("Canty") seeks payment of the balance of a claim for an initial office examination of Claimant (paid) and lumbar epidural steroid injections (LESI) and epidurography on date of service 07/25/18; a claim for a follow-up office examination of Claimant on 06/13/19; and a claim for a follow-up office evaluation of Claimant and lumbar discography injections on date of service 07/18/19. Applicant NY Ambulatory & Anesthesia, PC ("NYA&A") seeks payment of a single claim for anesthesia services on date of service 07/18/19.

Respondent denied Canty's claim for date of service 07/25/18 based on a peer review report by Vijay Sidhwani, DO (dated 11/21/18); and denied the remaining claims based on an independent medical examination (IME) of Claimant on 02/11/19 by Magda Fahmy, MD (PM&R and acupuncture).

There is a rebuttal of the peer review and IME report by Tim Canty, MD (dated 03/04/20).

The following evidence was submitted, reviewed, and considered:

All documents contained in the ADR Center as of the date the hearing was declared closed.

4. Findings, Conclusions, and Basis Therefor

Claimant is a 31-year old female passenger injured in a motor vehicle accident on 05/03/18. The claims and services in dispute are set forth in section "3" above.

Date of Service 07/25/18 - Peer Review Denial

Applicant Canty's first claim was for an initial examination of Claimant. LESI, and epidurography on date of service 07/25/18. Based on a peer review report by Dr. Sidhwani, Respondent reimbursed Canty for the office examination and denied payment for the LESI and epidurography.

In the peer review report, Dr. Sidhwani states that he was not provided with Dr. Canty's initial consultation report. Despite not having reviewed Dr. Canty's report, Dr. Sidhwani

concluded "there was no clinical evidence of radiculopathy, based on my own examination of the claimant nor was there any indication for therapeutic injections of any kind". The peer review report is factually insufficient on its face. Dr. Sidhwani's argument that there was no clinical evidence of radiculopathy is completely unsupported since he did not review Dr. Canty's initial evaluation report, nor is there any indication that Dr. Sidhwani personally examined Claimant (there is no IME report by Dr. Sidhwani in evidence and any such IME report is not listed among the documents Dr. Sidhwani reviewed).

Therefore, based on the totality of the evidence before me I find the LESI and epidurography on date of service 07/25/18 were medically necessary. Canty shall be awarded \$834.74 for these services.

Dates of Service 06/13/19 & 07/18/19 - IME Denials

Respondent denied these claims based on a PM&R and acupuncture IME of Claimant on 02/11/19 by Dr. Fahmy. The IME report documents objectively normal physical and Traditional Chinese Medicine (TCM) examinations of Claimant and is factually and legally sufficient to establish Respondent's *prima facie* medical necessity defense as to the subject claims. The burden of proof now shifts to Applicant to rebut the IME-based medical necessity defense. See, *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table), 2007 N.Y. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007). Applicant must present evidence as to why the subject post-IME treatment was needed whether because the Claimant's condition had changed after the IME or because the IME doctor's opinion following the IME was erroneous. See, *New Horizon Surgical Center, L.L.C. v. Allstate Ins. Co.*, 52 Misc.3d 139(A), 2016 N.Y. Slip Op. 51124(U) (App. Term 2d, 11th & 13th Dists. July 13, 2016).

As noted above, Dr. Canty initially examined Claimant on 07/25/18, and there are reports of multiple follow-up examinations and/or pain management services through and including 07/18/19. On 03/14/19 - approximately one (1) month after the IME, Dr. Canty reported findings including tenderness and palpable muscle spasms in Claimant's lumbar spine and cervical spine; reduced ranges of motion (ROM) of Claimant's cervical spine and lumbar spine; positive SI joint test; and motor and sensory deficits.

Positive examination findings were reported through and including 07/18/19. Based on the totality of the evidence before me I find the post-IME services rendered by Dr. Canty and NYA&A were medically necessary. The medical records and reports are sufficient to rebut the "negative" IME reports and demonstrate that Claimant was suffering causally related symptoms at least through 07/18/19.

Therefore, applicant Canty is awarded **\$2,822.89** and applicant NYA&A is awarded **\$189.07**. This Award is in full disposition of all claims and issues before me in this proceeding.

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	Amount Amended	Status
	Tim Canty M.D. PLLC	07/25/18 - 07/25/18	\$834.74		Awarded: \$834.74
	Tim Canty M.D. PLLC	06/13/19 - 06/13/19	\$127.41	\$92.98	Awarded: \$92.98
	Tim Canty M.D. PLLC	07/18/19 - 07/18/19	\$2,057.93	\$1,895.17	Awarded: \$1,895.17
	NY Ambulator y & Anesth esia, P.C.	07/18/19 - 07/18/19	\$594.20	\$189.07	Awarded: \$189.07

Total	\$3,614.28		Awarded: \$3,011.96
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- B. The insurer shall also compute and pay the applicant interest set forth below. 12/05/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to the Court of Appeals decision in LMK Psychological Services P.C. v. State Farm, 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009), interest is tolled until the filing date where the Applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9[c]).

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 New York

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

08/19/2020
(Dated)

Michael Resko

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:
43d0f284309f507fccdeb166882325d7

Electronically Signed

Your name: Michael Resko
Signed on: 08/19/2020