American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Amir Abdelsattar Beltagi, PT (Applicant)	AAA Case No.	17-19-1146-4247
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	32-4549-T59
	NAIC No.	25178
State Farm Fire & Casualty Company (Respondent)		

ARBITRATION AWARD

I, Aladar Gyimesi, 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 08/28/2020
   Declared closed by the arbitrator on 08/28/2020

   Walter Pisary, Esq. from Ratsenberg & Associates, P.C. participated by telephone for the Applicant

   John Rossillo, Esq. from Rossillo & Licata LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 554.40**, 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

   In dispute is Applicant's bill, in the total sum of $554.40, in connection with nine physical therapy treatments rendered from November 1 through 28, 2018 by Amir Abdelsaltar Beltagi (P.T.) to a 24 year old female operator EIP who was involved in a motor vehicle accident on June 6, 2018. Upon receipt of the reimbursement requests of Applicant in controversy, Respondent issued what I find to be a timely denial predicated upon the allegedly negative results of a P.M. & R. IME conducted by Dr. Francisco H. Santiago on November 11, 2018. Pursuant thereto, "all No-Fault Physical Medicine and Rehabilitation benefits" were denied effective as of October 30, 2018.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the pertinent documentation contained within the ADR Center as of the date of the hearing. Any issues contained in the record, not specifically raised at the time of the hearing, are considered by this Arbitrator to be moot and/or waived by the parties. This Award is based upon the oral argument, if any, of counsel and an analysis of the timely submission(s) of the respective parties hereto.

At the hearing, counsel for Applicant argued Respondent's claim specific denial dated March 11, 2019 was untimely since, as per same, Applicant's bill was received on December 24, 2018 and no information was provided therein as to when "final" verification may have been requested and/or received. A review of the record, however, reveals that on January 8 and February 6, 2019 Respondent issued initial and follow-up verification requests to the Applicant. On February 22, 2019, Applicant provided an arguable response to Respondent's verification requests. Within thirty days of Respondent's receipt of said response, Respondent issued its denial. Pursuant to subdivision (h) of No-Fault Regulation 65-3.8, effective April 1, 2013, "an insurer's non-substantive technical or immaterial defect or omission shall not affect the validity of a denial of claim". Respondent's denial was, in fact, timely issued. Following due deliberation, I find Respondent's failure to include the dates that final verification were requested and received constituted a "non-substantive technical or immaterial defect or omission". As a result, I find Respondent's denial to be timely. Consequently, the merits of Respondent's lack of medical necessity defense will now be explored.

The EIP appeared, at Respondent's request, for a P.M. & R. IME on October 11, 2018. On said occasion the EIP advised Respondent's designated examiner that she had been receiving a regimen of conservative therapies, on a three times a week basis, consisting of physical therapy, chiropractic and acupuncture treatments. The EIP did not incur any work loss following her motor vehicle accident and was employed, as a nursing aide, on or about the date of the IME. As far as her "Present Complaints", as reported the EIP "has no current acute discomfort". It was noted that the EIP could stand on her toes and heels, as well as one leg at a time. She could also bend over to reach the floor with her fingertips. Musculoskeletal examination of the EIP's cervical and lumbar spines revealed full ranges of motion without any tenderness or spasm of the adjoining paravertebral musculature. Evaluation of the EIP's extremities was also unremarkable. Neurological examination was within normal limits. The examiner concluded the EIP had sustained sprains/strains of her cervical, thoracic and lumbar spines, as a result of her motor vehicle accident, which had all "resolved". Further physical medicine treatment was deemed to be medically unnecessary.

A health care provider will initially establish a prima facie claim of medical necessity by its submission to the No-Fault carrier of an NF-3 form or its equivalent. Countrywide Ins. Co. v. 563 Grand Medical, P.C., 50 A.D. 3d 313, 855 N.Y.S. 2d 439 (App. Div., 1st Dept. - 2008); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D. 3d 742, 774 NYS 2d 564 (App. Div., 2nd Dept. - 2008). The No-Fault carrier, however, may rebut the inference of medical necessity by providing proof that the claimed healthcare benefits

were not medically necessary. Delta Diagnostic Radiology, P.C. v. Integon Natl. Ins. Co ., 2009 NY Slip Op 51502(U) (App Term, 2nd Dept - 2009). Where the No-Fault carrier's proof consists of an IME report, same must be predicated upon a sufficient factual basis and medical rationale. AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 50208(U), 22 Misc 3d 133(A) (App Term, 2nd Dept - 2009) and Alur Med Supply, Inc. v. Countrywide Ins. Co., 2008 NY Slip Op 51234(U), 20 Misc 3d 126(A) (App Term, 2nd Dept - 2008). If the No-Fault carrier presents sufficient evidence to satisfy its lack of medical necessity defense, the burden then shifts back to the Applicant to present its own evidence of medical necessity. West Tremont Med. Diagnostic, PC v. Geico Ins. Co., 13 Misc. 3d 131[A], 2006 NY Slip Op 51871, (App Term, 2nd Dept - 2005).

After due deliberation, I conclude the aforementioned P.M. & R. IME report was predicated upon a sufficient factual basis and medical rationale. AJS Chiropractic and Alur Med, supra. I find Respondent has rebutted the inference of medical necessity arising by reason of Applicant's submission of its NF-3. I have carefully reviewed all of the evidence presented herein. It is initially observed Applicant has submitted physical therapy progress notes relative to the dates of service in issue. Curiously some of those notes, pertaining to the disputed treatment dates of November 21, 27 and 28, 2018, are set forth on "Preferred Medical, PC" letterhead. There is also a physical therapy "initial" evaluation report, dated November 28, 2018, on said letterhead which would seem to be incongruous to the dates of the physical therapy treatments rendered from November 21 through 28, 2018 for which the Applicant herein is seeking to be compensated. It appears Respondent's examiner conducted a complete and thorough evaluation of the EIP's alleged injuries. It is additionally appreciated Applicant has submitted no rebuttal to the conclusions of Respondent's examiner. Furthermore, the EIP at the time of her IME had "no current acute discomfort" and missed no time from work as a result of any injuries sustained as a result of her motor vehicle accident. Considering the time that had elapsed since the underlying accident, the apparent nature of the EIP's injuries, her age and the EIP's treatment course, I find the conclusion of Respondent's examiner to be more credible and probative than the position being advanced by the Applicant, to wit, that the physical therapy treatments in issue were medically necessary. I conclude the EIP's injuries had resolved, or that the EIP had returned to her pre-accident status, as of the IME date. In view of all of the aforementioned I therefore find Respondent's denial, predicated upon the aforementioned negative IME, to be valid and effective vis-à-vis the physical therapy treatments rendered to the EIP from November 1 through 28, 2018. Applicant's reimbursement requests, relative thereto, are denied.

Accordingly, after a careful review of all the evidence and due regard for the argument of counsel, my Award is in favor of the Respondent. I find Applicant has failed to demonstrate, by a fair preponderance of the credible evidence, the medical necessity of the physical therapy treatments in controversy. Consequently, Applicant's claim is denied in its entirety.

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 New York

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

09/24/2020
(Dated)

Aladar Gyimesi

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:
a3f1defd9645c2bfb1758fbb2c137575

Electronically Signed

Your name: Aladar Gyimesi
Signed on: 09/24/2020