

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Alpha Imaging Consultants PLLC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-19-1130-9773

Applicant's File No. CF13006329

Insurer's Claim File No. 0528950207
2AL

NAIC No. 29688

ARBITRATION AWARD

I, Mitchell Lustig, 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

1. Hearing(s) held on 09/30/2020
Declared closed by the arbitrator on 09/30/2020

Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated in person for the Applicant

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

2. The amount claimed in the Arbitration Request, \$ 2,172.67, was AMENDED and permitted by the arbitrator at the oral hearing.

The claim was amended without objection to the sum of \$1,704.50 to comport with the relevant fee schedule. This amendment resolves all fee schedule disputes between the parties.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether the services provided to the Assignor were medically necessary?

4. Findings, Conclusions, and Basis Therefor

In dispute is Applicant Alpha Medical Imaging Consultants PLLC's claim as the assignee of a 21-year-old female injured in a motor vehicle accident on December 21, 2018, for reimbursement in the revised sum of \$1,704.50 for an MRI of the brain and additional sequence imaging of the brain performed by Dr. Karl Hussman on March 9, 2019.

The Respondent timely denied the claim based upon a peer review by Dr. Marianna Golden dated April 12, 2019. In her peer review report, Dr. Golden found that the brain MRI was medically necessary but she determined that the additional sequence imaging of the brain was not medically necessary. Thus, the issue presented for my determination is whether the Respondent has proved that the additional sequence imaging of the brain was not medically necessary.

I have reviewed the documents contained in the ADR Center. This decision is based upon the submissions of the parties and the arguments made by the parties at the hearing.

It is well settled that a health care provider establishes its prima facie entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2nd Dept. 2009); Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that the Applicant has established a prima facie case.

Upon proof of a prima facie case by the applicant, the burden shifts to the 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 2d and 11th Jud. Dists. 2004); Kings Medical Supply, Inc. v. Country-Wide Insurance Company, 5 Misc.3d 767, 2004 N.Y. Slip Op. 24394 (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).

WHETHER THE ADDITIONAL SEQUENCE IMAGING OF THE BRAIN WAS MEDICALLY NECESSARY

Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law), an insurance carrier is obligated to reimburse an injured party (or his or her assignee), for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle.

Lack of Medical Necessity is a valid defense to an action to recover No-Fault benefits. Countrywide Insurance Company v. 563 Grand Medical, P.C., 50 A.D.3d 313, 855 N.Y.S.439 (1st Dept. 2008); A.B. Medical Services, PLLC v. Liberty Mutual Insurance Company, 39 A.D.3d 779, 835 N.Y.S.2d 614 (2nd Dept. 2007); New York University Hosp. Rusk Institute v. Geico, 39 A.D.3d 832, 835 N.Y.S.2d 612 (2nd Dept. 2007).

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 2009 N.Y. Slip Op. 00351(2nd Dept. 2009); Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 17 Misc.3d 97, 2007 N.Y. Slip Op. 27427 (App. Term 1st Dept. 2007), such as by a qualified expert conducting a peer review of the injured person's treatment or performing an independent medical examination.

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 Indemnity Co., 12 Misc.3d 128(A), 2006 N.Y. Slip Op. 50963(U) (App. Term 1st Dept. 2006); Delta Diagnostic Radiology, P.C. v. Progressive Casualty Insurance Company, 21 Misc.3d 142(A), 2008 N.Y. Slip Op. 52450(U) (App. Term 2nd, 11th and 13th Jud.Dists. 2008).

A peer review report's factual basis may be insufficient if it fails to provide specifics of the claim, is conclusory, or otherwise lacks a basis in the facts of the claim. Devonshire Surgical Facility, Carnegie Hill Orthopedic Services, P.C. v. American Transit Insurance Company, 31 Misc.3d 129(A), 2011 N.Y. Slip Op. 50513(U) (App. Term 1st Dept. 2011); East Coast Acupuncture Services, P.C. v. American Transit Insurance Company, 14 Misc.3d 135(A), 2007 N.Y. Slip Op. 50213(U) (App. Term 1st Dept. 2007);

Even if a peer review is sufficiently factually based, its medical rationale may be inadequate if it fails to demonstrate that the disputed service was inconsistent with generally accepted medical or professional practice. James M. Ligouri Physician, P.C. v. State Farm Mut. Auto Ins. Co., 15 Misc.3d 1103(A), 2007 N.Y. Slip Op. 50465(U) (N.Y. Dist. Ct. 2007); Jacob Nir, MD v. Allstate, 7 Misc.3d 544, 2005 N.Y. Slip Op. 25090 (N.Y. Civ. Ct. Kings. Co. 2005). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of the patient in light of the standards and values that define its calling." A.B. Medical Services, PLLC v. New York Central Mutual Fire Insurance Company, 7 Misc.3d 1018(A), 2005 N.Y. Slip Op. 50662(U) (N.Y. Civ. Ct. Kings Co. 2005). Moreover, the opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the

services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Company, 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. 2004).

In concluding that the additional sequence imaging of the brain performed by Dr. Hussman on March 9, 2019 was not medically necessary, Dr. Golden stated as follows in her peer review report dated April 12, 2019:

"No additional sequences or imaging were needed in this case. MRI was sufficient to rule out structural post traumatic pathology. Therefore additional sequencing including DTI was not medically necessary."

After careful review of the evidence, I find that the Respondent has not submitted sufficient evidence to satisfy its burden of proof that the additional sequence imaging of the brain was not medically necessary. Dr. Golden fails to cite any competent medical authority and merely gives her opinion that the additional sequence imaging of the brain was not medically necessary. The peer review doctor simply asserts in a conclusory fashion, without the citation of competent medical authority, that "MRI was sufficient to rule out structural post traumatic pathology."

The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. See Cambridge Medical, P.C. v. Government Employees Insurance Company, 18 Misc.3d 1144(A), 2008 N.Y. Slip Op. 50435(U) (N.Y. Civ. Ct. Richmond Co. 2008); Williamsbridge Radiology & Open Imaging v. Travelers Indem. Co., 2007 N.Y. Slip Op. 50224(U) (N.Y. Civ. Ct. Kings Co. 2007); City Wide Social Work & Psychological Services, PLLC v. Travelers Indemnity Company, 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. 2004).

Without evidence of accepted medical practice, a peer reviewer's opinion is simply a different professional judgment which, in and of itself, does not establish that the disputed services/supplies were not medically necessary. *Id.*

Given that Dr. Golden failed to set forth a sufficient factual basis and medical rationale for her opinion that the additional sequence imaging of the brain was not medically necessary, I find that the Respondent did not establish, *prima facie*, a lack of medical necessity for the services in dispute.

Accordingly, the Respondent's denial predicated upon Dr. Golden's peer review is vacated and I find in favor of the Applicant in the sum of \$1,704.50.

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
	Alpha Imaging Consultants PLLC	03/09/19 - 03/09/19	\$2,172.67	\$1,704.50	Awarded: \$1,704.50
Total			\$2,172.67		Awarded: \$1,704.50

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/07/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall pay interest on the claim from June 7, 2019, the date that arbitration was requested, until such time as payment is made.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of \$1,360.00. See 11 NYCRR 65-4.6(d). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 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 Nassau

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

10/02/2020
(Dated)

Mitchell Lustig

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:
0aebf04e4ab2a1528ed9b203503cb8e7

Electronically Signed

Your name: Mitchell Lustig
Signed on: 10/02/2020