

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tim Canty M.D. PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-20-1169-2950
Applicant's File No. A25524
Insurer's Claim File No. 1043037-02
NAIC No. 16616

ARBITRATION AWARD

I, Preeti Priya, 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 [KPS]

1. Hearing(s) held on 01/28/2021
Declared closed by the arbitrator on 01/28/2021

Amisha Dukarm, Esq., from Munawar & Hashmat LLP participated by telephone for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$ 1,920.71**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel, at the hearing, amended the amount in dispute to \$1,822.02 in compliance with the New York State Workers' Compensation fee schedule.

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

3. Summary of Issues in Dispute

The dispute arises from the underlying automobile accident of October 30, 2018 in which the Assignor, a 53 year old male, was a passenger. The issues in this matter are:

Whether Applicant established entitlement to No-Fault compensation for fees associated with office visits, diagnostic tests and physical therapy provided to Assignor;

Whether Respondent made out a prima facie case of lack of medical necessity and, if so, whether Applicant rebutted it.

4. Findings, Conclusions, and Basis Therefor

Applicant was represented by Amisha Dukarm, Esq., who presented oral arguments and relied upon documentary submissions. Jack Hassel, Esq., representing Respondent, presented oral arguments and relied upon documentary submissions. I have reviewed the submissions contained in the American Arbitration Association's ADR Center. These submissions and oral arguments are the record in this case.

The medical records indicate that Assignor sought private medical attention on November 7, 2018 and was evaluated by Neofitos Stefanides, MD. He received conservative care, which included physical therapy. Assignor also underwent diagnostic tests. Of significance to this matter is that office visits, diagnostic tests and physical therapy were provided between June 18 and December 3, 2019. Applicant submitted the claims to Respondent; payment was denied.

Preliminarily, I find that Applicant established its prima facie case of entitlement to No-Fault compensation for its claim. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Since Respondent's denials were timely, it was within its rights to assert that further treatment was medically unnecessary. Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co., 2002 NY Slip Op 40420(U), 2002 WL 31108069 (App. Term 2d & 11th Dists. June 27, 2002).

Respondent denied the claims based on an independent orthopedic examination by Eric S. Roth, MD conducted February 18, 2019. Thereafter, no fault benefits were terminated March 16, 2019. He opined that there was no need for physical therapy, PM&R treatment or acupuncture.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008). If he does so, it becomes incumbent on the claimant to rebut the IME review, see AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), 2009 NY Slip Op 50208(U), 2009 WL 323421 (App. Term 2d & 11th Dist. Feb. 9, 2002), because the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Shtarkman v. Allstate Insurance Co., 2002 NY Slip Op 50568(U), 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance

company). The insured or the provider bears the burden of persuasion on the question of medical necessity. Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 NY Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). This burden of proof is properly placed on a claimant health care provider because presumably it is in possession of the injured party's medical records.

Applicant submitted a Rebuttal by Tim Canty, MD, in support of the services and in response to the IME report. He was "not persuaded by the doctor's findings. The patient on exam complained of neck, lower back, left shoulder left elbow and right wrist pain. He also noted that the dad been experiencing occipital headaches. He claims that there was evidence of symptom magnification." Dr. Canty explained "A follow-up examination was performed on 2/25/19, days after the IME. On exam, there was reduced range of motion in the cervical and lumbar spine as well as the Left Shoulder. Spasms and tenderness were elicited on palpation. There were numerous positive tests including the Sacroiliac joint, SLR, Patrick Test, Spurling's Test and Impingement Test. There was decreased strength and sensation in both the upper and lower extremities. This patient needed further treatment. Please see my full medical chart as this patient needed further medical treatment including physical therapy and a course of injections." He then stated the AMA definition of medical necessity.

Applicant submitted evaluation reports, physical therapy notes and EMG/NCV test results in support of further treatment and services. There is a linked case with AAA number 17-20-1169-2950, where the Assignor and Applicant herein are the same. In 17-20-1169-2950, I was "persuaded by Dr. Canty that Assignor needed further medical attention post IME. Dr. Canty's evaluation of February 25, 2019, seven days after the IME, lists restricted ranges of motion of the spine. There are positive findings to objective tests such as Spurling's Test and Neer. There are office visits conducted until August 27, 2019. The evaluations reports continue to list positive findings."

In the matter before me, the first evaluation report is dated October 29, 2019. In the records provided to me, there is a gap in evaluation and treatment of almost two months between the August 27th and October 29th evaluation. I find that Applicant, Tim Canty M.D. PLLC, has not rebutted Respondent's defense and has not sustained Applicant's burden of proof by a preponderance of credible evidence for dates of service after June 18, 2019. Applicant did not provide any other evaluation reports until October 29th; only progress notes of October 14th and 21st which do not list any objective test findings. Based on the foregoing, Applicant's claim is denied for dates of service October 14 to December 2, 2019.

Based on the foregoing, Applicant is awarded \$67.60.

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	06/18/19 - 06/18/19	\$78.31	\$67.60	Awarded: \$67.60
	Tim Canty M.D. PLLC	10/14/19 - 10/14/19	\$78.31		Denied
	Tim Canty M.D. PLLC	10/21/19 - 10/21/19	\$78.31		Denied
	Tim Canty M.D. PLLC	10/29/19 - 10/29/19	\$127.41		Denied
	Tim Canty M.D. PLLC	11/04/19 - 11/04/19	\$78.31		Denied
	Tim Canty M.D. PLLC	11/11/19 - 11/11/19	\$408.50		Denied
	Tim Canty	11/13/19 -			

	M.D. PLLC	11/13/19	\$914.94		Denied
	Tim Canty M.D. PLLC	12/02/19 - 12/02/19	\$78.31		Denied
	Tim Canty M.D. PLLC	12/03/19 - 12/03/19	\$78.31		Denied
Total			\$1,920.71		Awarded: \$67.60

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/23/2020 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 payment became overdue to the date of the payment of the award pursuant to 11 NYCRR 65-3.9 (a). The end date for the calculation of the period of interest shall be the date of payment of the claim. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.")

C. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the within arbitration request was filed on or 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 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 New York

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

01/28/2021
(Dated)

Preeti Priya

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:
80f44fc9c8107645918eefefae722ea0

Electronically Signed

Your name: Preeti Priya
Signed on: 01/28/2021