

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Alexios Apazidis, MD, PC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-19-1142-7966

Applicant's File No. SS-109028

Insurer's Claim File No. 79803-03

NAIC No. 24309

ARBITRATION AWARD

I, Marina O'Leary, 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: GG

1. Hearing(s) held on 01/06/2021
Declared closed by the arbitrator on 01/06/2021

Abraham Meir from Samandarov & Associates, P.C. participated by telephone for the Applicant

Joseph Karoly from Law Offices of Rubin & Nazarian participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 5,816.37**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced the claim to \$4276.08 to comport with the applicable fee schedule. The breakdown is as follows:

\$3862.76 Primary surgeon fee

\$413.32 Physician assistant fee

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

3. Summary of Issues in Dispute

GG, a 38 year old male passenger, was injured in a motor vehicle accident on October 13, 2018. He underwent a left knee arthroscopic surgery on March 15, 2019. Applicant provided the surgeon services. He is seeking \$3862.76 for her services and \$413.32 for the assistant surgeon fees. Thus the amount in dispute is \$4276.08. Respondent denied the claim based upon a lack of medical necessity. Respondent relies upon the peer review of Dorothy Scarapinato, MD, dated August 13, 2019. Applicant submits the rebuttal opinion of Alexios Apazidis, MD, the treating surgeon. The sole issue to be determined is whether the surgery was medically necessary.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. These findings and conclusions are based on my review of the records on the ADR Center maintained by the American Arbitration Association as of the date the hearing was declared closed and oral argument at the hearing. 11 NYCRR § 65-4.5(o)(1) provides that an arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to the legal rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations.

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 NY Slip Op 00351 (App Div 2d Dept., Jan. 20, 2009, such as by a qualified expert performing an independent medical examination, conducting a peer review of the injured person's treatment, or reconstructing the accident. *Id.* 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.3d 142(A) (App Term 2d Dept., 2008).

PEER REVIEW BY DOROTHY SCARAPINATO, MD:

Respondent relies upon the peer review by Dorothy Scarapinato, MD in support of its denial. In her report, Dr. Scarapinato lists the medical records reviewed and provides a concise medical history post-accident. Upon her review, she determined that the surgery was not medically necessary.

She notes that the MRI report of the left knee did not reveal the presence of a meniscus tear in the left knee. Indeed, the MRI was reviewed by an independent radiologist, Dr. Fisher, who noted a completely normal MRI without any evidence of meniscal or ligament tears and without radiographic evidence of traumatic or causally related injury to the left knee.

Dr. Scarapinato questions why Dr. Apazidis proceeded with surgery especially when the progress notes note that the claimant was improving on every visit. Since it was clear to Dr. Scarapinato that the claimant was demonstrating a positive therapeutic effect to active rehabilitation, she saw no indication for any surgical intervention or post-surgery derivative services and DME.

I find that Respondent has sustained its burden of production.

REBUTTAL BY ALEXIOS APAZIDIS, MD

Applicant submits the rebuttal opinion of Alexios Apazidis, MD, the treating surgeon. Dr. Apazidis reviewed the peer review and, not surprisingly, is in strong disagreement with Dr. Scarapinato's conclusion.

Dr. Apazidis initially examined the injured party on March 1, 2019. Upon examination, the patient reported constant knee pain which he described as "sharp, stabbing, throbbing, stiff, and with a twinge." The injured party also reported his knee "giving way". The pain was made worse with bending, lifting, walking, and standing. The pain was rated as an eight out of ten on a ten-point scale and getting worse. Upon examination, the patient had joint line tenderness, mild effusion, a positive McMurray's test, and reduced range of motion.

Dr. Apazidis reviewed the patient's MRI and recommended arthroscopic surgery.

As an initial point, Dr. Apazidis points out that the MRI revealed a Grade 2 signal, which could be indicative of a tear in up to 50% of cases, giving the injury a very significant likelihood that surgery is indicated. Dr. Apazidis takes issue with the independent radiological review and instead relies upon the MRI interpretation by Michael Green, MD - the treating radiologist. Indeed, Dr. Apazidis notes that the MRI findings were correlated with the positive findings upon examination which included a positive McMurray test and joint line tenderness. He adds that these positive findings are indicative of a tear.

Addressing Dr. Scarapinato's observation that the MRI did not reveal evidence of traumatic injury, Dr. Apazidis notes that the mechanism of injury was likely to have caused this injury. He surmises that the probable cause of injury was that the patient's knee came into contact with the dashboard. He notes that this type of impact can easily cause tears and other injuries - which in fact did so in this patient.

Citing authority, Dr. Apazidis advises that meniscal tears should be surgically treated. If a tear is not treated, Dr. Apazidis advises it may get worse with potentially severe complications due to increased contact pressures and stresses on the remaining meniscal tissue. For these reasons, he opined that surgical repair was medically necessary.

DECISION

I am more persuaded by the opinion of Dr. Apazidis. When presented with the medical opinion of two equally competent professionals, greater weight is generally afforded to the treating physician. Such is the case herein.

I note that, although Dr. Green reported a "grade II signal in the posterior horn of the medial meniscus with no tear seen," the objective findings by Dr. Apazidis coupled with the Grade II signal suggested a tear. I note that this MRI was performed on 11/02/2018 - four months prior to the surgery. I am persuaded by Dr. Apazidis' statement that failure to address a tear will only worsen over time. It appears that his words were entirely true for this patient. Indeed, a tear was revealed during the surgery, which was repaired by Dr. Apazidis.

Further, at his March 1, 2019 examination with Dr. Apazidis, the patient noted to Dr. Apazidis that his knee pain was not getting better. This is entirely contrary to the observation made by Dr. Scarapinato, that the patient was improving.

Thus, upon consideration of the medical records, the peer review by Dr. Scarapinato, the rebuttal by Dr. Apazidis and the arguments of counsel, I find that Respondent's denial cannot be sustained. Applicant's amended claim is granted.

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
	Alexios Apazidis, MD, PC	03/15/19 - 03/15/19	\$562.19	\$413.32	Awarded: \$413.32
	Alexios Apazidis, MD, PC	03/15/19 - 03/15/19	\$5,254.18	\$3,862.76	Awarded: \$3,862.76
Total			\$5,816.37		Awarded: \$4,276.08

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/23/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an 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." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Attorney's Fees The insurer shall also pay the applicant for attorney's fees as set forth below. As the claim was filed subsequent to the Sixth Amendment to 11 NYCRR §65-4.6 (Insurance Regulation 68-D) which took effect on February 4, 2015, Attorney's Fees shall be calculated pursuant to the amended terms, as follows: 20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of \$1,360. [11 NYCRR §65-4.6]. There is no minimum fee.

- 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, Marina O'Leary, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/04/2021
(Dated)

Marina O'Leary

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:
afc145be6d19dc5aecb5ef9b36930ce0

Electronically Signed

Your name: Marina O'Leary
Signed on: 02/04/2021