American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SCOB LLC (Applicant)	AAA Case No.	17-20-1187-0115
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	0468957430000001
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Susan Mandiberg, 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: The EIP

1. Hearing(s) held on 07/14/2021
   Declared closed by the arbitrator on 07/14/2021

   Kim Gitlin, Esq. from Judd Shaw Injury Law P.A. participated in person for the Applicant

   Angelica Barkansky, Esq. from Rivkin & Radler LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,028.30**, was AMENDED and permitted by the arbitrator at the oral hearing.

   At the time of the Hearing, Applicant's counsel amended the total amount in dispute to the sum of $976.38, which comports with Respondent's Fee Schedule calculations. Applicant withdrew the claim originally interposed for anesthesia rendered by Premier Anesthesia, with prejudice.

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

3. Summary of Issues in Dispute

The 39-year-old male EIP was a cyclist involved in the instant motor vehicle accident on 1/3/20. Thereafter, the EIP sought medical attention for injuries sustained to his neck and back. On 7/2/20, the EIP underwent lumbar spine epidural steroid injections, for which the facility fees are presently in dispute. Respondent timely denied reimbursement for this billing based upon a peer review performed by Michael E. Tawfellos, M.D. on 9/11/20. The issue presented is whether these services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided after due consideration of the arguments of the parties and after review of the submissions and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein. This case involves facility fees/billing for lumbar spine epidural steroid injections (ESI's) performed on 7/2/20. The services were rendered following a motor vehicle accident that took place on 1/30/20. Respondent timely denied reimbursement for the billing based upon a peer review generated by Michael E. Tawfellos, M.D. on 9/11/20.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered…The Arbitrator may question 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. In addition, Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Orthopedic Rehabilitation a/a/o "I.B." v. Country-Wide Insurance Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at [his/her] decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents".

It is well-settled under New York State No-Fault Lawthat a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v General Assurance Co., 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2nd Dept., June 2, 2006; *See*: Insurance Law §5106 (a); 11 NYCRR§ 65-1.1;Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD3d 742, 774 N.Y.S.2d 564 (2004); Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2nd & 11th Jud Dists.)]. *See also:* 11 NYCRR §65-1.1; Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co., 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006.

The evidence demonstrates that the 39-year-old male EIP was a cyclist involved in the instant motor vehicle accident on 1/30/20. Following the accident, the EIP was evaluated emergently at Bellevue Hospital and was discharged later that day. On 2/3/20, the EIP came under the care of John Greco M.D. for complaints of lower back pain. The examination revealed a number of positive findings, including decreased ranges of motion and the EIP was diagnosed with lumbar radiculopathy, for which physical therapy and medication was prescribed. The EIP was to commence a course of conservative treatment including acupuncture, physical therapy, and chiropractic manipulations. On 2/27/20, the EIP was evaluated by Dr. Orenstein for complaints of lower back pain associated with numbness and tingling in the left leg. EMG and NCV testing was performed that day and revealed findings within normal limits. MRI of the lumbar spine was performed on 3/9/20 and revealed disc herniation contacting the right S1 nerve root at L5-S1, with end plate changes at that level and straightening of the lumbar spine, suggesting muscle spasm. On 5/14/20, the EIP was evaluated at Metro Pain Specialists, PC and continued physical therapy was recommended, as well as pain medication. The EIP was diagnosed with bilateral lumbar facet syndrome and bilateral lumbar radiculopathy after evaluation by Deonarine Rampershad, P.A. on 5/20/20. On 6/23/20, the EIP was again evaluated at Metro Pain Specialists PC for complaints of lower back pain and, once again, physical therapy was recommended, as well as pain medication. On 7/2/20, David Abbatematteo, M.D. evaluated the EIP for persisting lower back pain with radiation to the bilateral lower extremities. The examination revealed a number of positive objective findings, for which the instant lumbar epidural steroid injections and facet blocks were performed. All of the relevant reports, evaluations, test results and treatment notes were reviewed and considered.

Respondent timely denied reimbursement for the instant billing based upon a peer review issued on 9/11/20 by Michael E. Tawfellos, M.D., which concluded that the billing was not medically necessary. More specifically, Dr. Tawfellos posited "in this case, the claimant had complaints of lower back pain after the MVA dated 1/30/2020. As per the available medical records, the claimant received only four sessions of conservative care in the form of acupuncture treatment and physical therapy from 3/5/2020 to 3/20/2020 which was inadequate to resolve the claimant's symptoms. Further, as per the EMG/NCV of the lower extremities dated 2/27/2020, there was no evidence of lumbar radiculopathy." A number of authoritative sources were cited and the peer reviewer concluded that, pursuant to such guidelines, the lumbar epidural steroid injection was not recommended, since "the pain has not responded to at least four (4) weeks of appropriate conservative management, unless there is evidence of radiculopathy. The claimant's lumbar spine symptoms should have been treated with adequate conservative care in the form of physical therapy, acupuncture and chiropractic treatment for at least four (4) weeks before proceeding with the lumbar epidural server injection. Therefore, as per the above cited guidelines and the available medical records, the lumbar epidural steroid injection performed on 7/2/2020 was not medically necessary". Based upon this peer review, Respondent denied reimbursement

The burden is on the insurer to prove lack of medical necessity. *See:* Behavioral Diagnostics v Allstate Ins. Co., 3 Misc. 3d 246, 776 N.Y.S.2d 178, 2004 Slip Op. 24041

(Civ. Ct. Kings County 2004); A.B. Medical Services v Geico Ins., 2 Misc. 3d 26, 773 N.Y.S.2d 773, 2003 Slip Op 23949 (App Term, 2nd Dept. 2003). *See also*: Elm Medical P.C. v American Home Assurance Co., 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 (Civ. Ct., Kings Co., 2003); Fifth Ave. Pain Control Ctr. v Allstate Ins. Co., 196 Misc. 2d 801,766 NYS2d 748 (Civ. Ct., Queens Co., 2003). When a denial is premised upon lack of medical necessity, it must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. *See*: Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc. 3d 975; Citywide Social Work, et. al. v. Travelers Indemnity Co., 3 Misc. 3d 608; Elm Medical P.C. v. American Home Assurance Co., 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 (Civ. Ct., Kings Co., 2003); Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co., 196 Misc. 2d 801, 766 NYS2d 748 (Civ. Ct., Queens Co., 2003). Once Respondent meets this burden of proof then the burden shifts back to Applicant to present competent medical proof as to the medical necessity for the disputed billing by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2nd & 11th Jud. Dists. 9/29/06); A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2nd & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (*See* Insurance Law §5102). *See also*: Be Well Medical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 18 Misc3d 139(A), 2008 WL 506180 (App. Term 2nd & 11th Dists. Feb. 21, 2008).

The evidence herein - as detailed above - demonstrates that the EIP was repeatedly advised by his treating providers to pursue a course of conservative treatment/physical therapy following this accident for injuries sustained to his back. However, as noted in the peer review, the EIP, in fact, only actually underwent four (4) sessions of conservative treatment, which included merely 3 sessions of physical therapy and 1 acupuncture treatment, all of which were performed from 3/5/20 to 3/20/20, which was several months prior to the date that the instant epidural steroids were performed. Moreover, the EMG and NCV testing performed to the EIP's lumbar spine revealed normal findings/no evidence of lumbar radiculopathy. As such, the peer reviewer concluded that in the absence of an appropriate course of conservative treatment and a diagnosis of lumbar radiculopathy, the instant epidural steroid injections (for which the facility fees were charged) were not medically necessary. I find that this peer review is both credible and persuasive, particularly in the absence of any medical evidence or rebuttal report to contest this position.

Based upon the foregoing, for the reasons set forth herein, and after a thorough review of the totality of the credible evidence submitted herein, I find that the unrefuted peer review upon which Respondent's denial is premised is more credible and persuasive than Applicant evidence.Therefore, Respondent's denial is sustained.

Accordingly, this claim is denied.

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 Nassau

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

07/18/2021
(Dated)

Susan Mandiberg

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:
4ba44bb561b807e46a0ef8bc91ef6b12

Electronically Signed

Your name: Susan Mandiberg
Signed on: 07/18/2021