American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Harmony Anesthesiology PC (Applicant)	AAA Case No.	17-19-1139-9300
	Applicant's File No.	RFA19-258278
- and -	Insurer's Claim File No.	9RINY02049-04
	NAIC No.	29742
Integon National Insurance Company (Respondent)		

ARBITRATION AWARD

I, Bryan Hiller, 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 07/21/2021
   Declared closed by the arbitrator on 07/21/2021

   Dara Goodman, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

   John Rossillo, Esq. from Rossillo & Licata LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,080.40**, 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

   Whether Applicant is entitled to reimbursement for the fees for the anesthesia for a lumbar epidural steroid injection performed on the Assignor on May 12, 2018 in connection with injuries sustained in a motor vehicle accident on February 10, 2017 in light of the Respondent's Peer Review performed by Dr. Jay Weiss on June 1, 2018 stating that the services were not medically necessary?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with the anesthesia for a lumbar epidural steroid injection performed on the Assignor on May 12, 2018 in connection with injuries sustained by Assignor in a motor vehicle accident on February 10, 2017. The injection and associated services at issue was denied following a review of the medical records and a Peer Review report by Dr. Jay Weiss on June 1, 2018 at Respondent's behest after which payment for injection and associated fees were denied as not medically necessary. The denial was timely. This decision is based upon the written submissions of counsel for the respective parties as well as oral argument at the hearing conducted on July 21, 2021. I have reviewed the documents contained in the Record as of the date of the hearing. Following the amendment to the claim amount, Respondent's representative stated that it was no longer pursuing a fee schedule issue, so I deem that defense abandoned.

Assignor, a then 22 year old female restrained front seat passenger, was involved in an automobile accident on February 10, 2017. There is no indication of any immediate or emergent hospital care. Due to continued pain, Assignor came under the care of multiple conservative care providers. Over a year after the accident, Assignor came under the care of Medical First New York, PC on May 12, 2018. Following the evaluation, treating physician Dr. Varuzhan Dovlatyan ordered the subject lumbar epidural steroid injection. The anesthesia for the lumbar epidural steroid injection at issue was provided to the Assignor by Applicant Harmony Anesthesiology PC on May 12, 2018 and the notes related to the treatment are attached to the Record.

Applicant establishes its prima facie entitlement to no-fault benefits by proving the submission of statutory claim forms, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue (see Insurance Law § 5106 [a]; Mary Immaculate Hosp. v Allstate Ins. Co., 5 AD3d 742 [2d Dept 2004]). The documents merit out that the Applicant has established its prima facie entitlement to benefits based on the valid submission of the bill and that the Respondent preserved its defense by issuing a timely denial.

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 (see 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)).

The Respondent must establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity (see Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 21 Misc.3d 142A, 880 N.Y.S.2d 223 (2nd Dept. 2008)). Additionally, it must be proven that said rationale is supported by evidence of the generally accepted medical/professional practices (see Prime Psychological Servs., P.C. v. Progressive Cas. Ins. Co., 24 Misc.3d 1244A, 901 N.Y.S.2d 902 (Civ. Ct. Richmond Cty. 2009)). Once the Respondent makes a sufficient showing to carry its burden of coming forth with evidence of lack of medical necessary, the Applicant must rebut it (see A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Insurance, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (2007)). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the

arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/Peer doctor with his own facts (see Park Slope Medical and Surgical Supply, Inc. v. Travelers, 37 Misc.3d 19 (2012)).

To support their position, the Respondent submitted a denial based upon the peer review report of Dr. Jay Weiss, dated June 1, 2018, in which he opined that the first examination by the treating provider was fifteen month post accident. Dr. Weiss noted that the Assignor had pain but none of a radiating nature and there were findings of decreased ranges of motion with multiple subluxations and trigger points in the cervical and lumbar spines but no neurological assessments were done. Dr. Weiss argued that not only were there no neurologic abnormalities but there was not even a high enough index of suspicion to assess lower extremity neurologic status. Dr. Weiss continued that the epidural injections would not be indicated for chronic nonradicular pain as was the case here. Dr. Weiss cited to medical authority regarding the fact that either in the acute or non-acute phase, lumbar epidural steroid injections would not be warranted without radicular symptoms. As such, Dr. Weiss determined that the injection and associated services like anesthesia, was not medically necessary.

I find that Respondent has established a lack of medical necessity for the anesthesia for the lumbar epidural steroid injection, with the conclusions of Dr. Weiss supported by sufficient evidence and a medical rationale (see Nir v. Allstate, 7 Misc 3d 544; 796 N.Y.S.2d 857 (Civ. Ct., Kings, 2005)). When the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity (see West Tremont Medical Diagnostic P.C., v. GEICO, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006)). Dr. Weiss' position that the medical standard is to only perform lumbar epidural steroid injection in the case of radiculopathy or radicular symptoms was sufficient to shift the burden to Applicant to determine the medical necessity.

Applicant had Dr. Dovlaytan testify by way of rebuttal. Dr. Dovlatyan noted that both of the related patient's in this case had identical complaints and were both in such serious pain that they were in tears on the initial evaluation. Dr. Dovlaytan argued that the Assignor had over a year of conservative treatment and still had pain at a rate of 8 or 9 out of 10 causing an inability to ambulate properly and perform activities of daily living. Dr. Dovlaytan pointed to the significant MRI findings which indicated bulging discs and testified that both Assignors had pain going into the bilateral hips, an indication that radiating pain was beginning. Dr. Dovlaytan argued that as soon as there was this slight radiation you would want to perform the subject injections as you would not want the radiation to escalate to something more serious. Dr. Dovlaytan argued that with the multiple bulging discs and pain going to the hips and buttocks, there was the beginnings of a radicular component to establish the necessity of the epidural steroid injections and the anesthesia was needed as the Assignors could not tolerate pain and were anxious and nervous due to the pain and for the procedures.

On cross examination, Dr. Dovlaytan noted that he was not using any records related to the treatment he provided as he had a great recollection of the patients. He did not have his report in front of him but agreed that no neurological testing at the time of the initial

examination on May 12, 2018. Dr. Dovlaytan advised that if there was no designation of numbness or radicular components on the examination. Dr. Dovlaytan admitted that prior to consideration for lumbar epidural steroid injection there should be a neurologic evaluation testing for muscle strength, sensory function and reflexes as they are indicative of radicular components. Dr. Dovlaytan concluded that the standard of care does not require radiculopathy in light of the positive MRI findings and beginning of pain radiation.

Based upon the foregoing, I find that Applicant, the anesthesia provider for the lumbar epidural steroid injection at issue, has failed to established its own evidence of medical necessity for the anesthesia and injection by a preponderance of the evidence. The findings of Respondent's peer review report were sufficient to shift the burden to the Applicant to prove the necessity of the treatment. Applicant has failed to establish any medical reason or rationale why the surgery and associated anesthesia was provided pursuant to the standard of care. There was a lack of neurological or radicular findings, limited testing including straight leg raise to indicate facet syndrome and nowhere was there any provided rationale for the injection procedure. Dr. Dovlaytan's inability to differentiate the two patients and admittance that neurological testing should be provided prior to performing the injections were fatal to the Applicant's case. Applicant has failed to provide any information or rationale on why the injection procedure was performed, besides the general belief that the Assignor's condition persisted and the disc bulging was significant. Dr. Dovlaytan's refusal to review his records and make informed comment ruined his credibility. As such, Applicant has failed to rebut the presumptions set forth in the peer review by Dr. Weiss and Applicant claim is denied in full.

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

07/26/2021
(Dated)

Bryan Hiller

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:
dbe16ecaba1f69a364aa2450f8ee98d6

Electronically Signed

Your name: Bryan Hiller
Signed on: 07/26/2021