

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Personal Health Imaging
(Applicant)

- and -

State National Insurance Company
(Respondent)

AAA Case No. 17-21-1189-9936

Applicant's File No. NF365708

Insurer's Claim File No. AMS6709-01

NAIC No. Self-Insured

ARBITRATION AWARD

I, Ioannis Gloumis, 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: EIP.

1. Hearing(s) held on 07/26/2021
Declared closed by the arbitrator on 07/26/2021

Clifford Ryan, Esq. from Law Office of Thomas Tona P.C participated for the Applicant

Donald Kavanagh, Esq. from Bruce Somerstein & Associates, P.C. participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 787.53**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount in dispute; to the timeliness of Respondent's denial of the claim in dispute; and, that the issue to be determined is whether Respondent's denial of the claim based upon the defense of lack of medical necessity should be sustained.

3. Summary of Issues in Dispute

Applicant seeks reimbursement of charges for an MRI of the cervical spine performed upon the EIP on November 9, 2020, following a September 29, 2020 motor vehicle accident. Respondent denied the claim based upon the peer review report of Miranda Smith, M.D.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments made by the parties during the arbitration hearing and the admissible documentary evidence submitted by the parties. There were no witnesses that testified during the arbitration hearing.

SUMMARY OF FACTS

The EIP, then a 49-year-old male restrained driver, was injured when he was involved in a collision with another motor vehicle on September 29, 2020. The EIP's vehicle sustained impact to the front driver's side. Following the accident, the EIP went to the emergency department of Nyack Hospital, where he was evaluated, treated, and later discharged. Thereafter, the EIP sought private medical attention and came under the care of Dr. Billy Ford on October 13, 2020. The EIP reported complaints of pain in the neck, lower back, left shoulder, and right shoulder. Dr. Ford evaluated the EIP and recommended MRIs of the cervical and lumbar spine and bilateral shoulders. There was a recommendation to continue with physical therapy and chiropractic treatment and follow-up for evaluation in 2-4 weeks.

Applicant performed the MRI of the cervical spine on November 9, 2020. Applicant submitted its bill to Respondent for the MRI of the cervical spine. Respondent's denial acknowledges that Respondent received the bill for the claim on November 18, 2020. Respondent denied the claim on December 5, 2020 based upon the defense of lack of medical necessity predicated upon the peer review report of Dr. Smith.

LEGAL STANDARD FOR PRIMA FACIE CASE

To establish a prima facie case, a claimant is required to submit proof that it timely sent its claim for no-fault benefits to the insurer, that the insurer received the claim, and that the insurer failed to pay or deny the claim within 30 days. See *Amaze Med. Supply Inc. v Allstate Ins. Co.*, 3 Misc 3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004).

An insurer's denial of claim form indicating the date on which it was received adequately establishes that the claimant sent, and that the insurer received the claim. *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

APPLICATION OF LEGAL STANDARD TO THE CLAIM

Respondent's denial shows that Applicant received the bill for the claim on November 10, 2020. Therefore, I find that Applicant has established its prima facie case for the claim. Furthermore, Respondent timely denied the claim on November 23, 2020 based upon the defense of lack of medical necessity predicated upon the peer review report of Dr. Smith.

DEFENSE - LACK OF MEDICAL NECESSITY

Peer Review Report - Miranda Smith, M.D. (December 2, 2020)

In her peer review report, Dr. Smith stated that Dr. Ford did not document that conservative treatment, including physical therapy, was recommended at the time of the visit of October 13, 2020.

Dr. Smith opined that the MRI of the cervical spine was ordered approximately two weeks after the motor vehicle accident, which represents excessive use of advanced spinal imaging. Dr. Smith stated that the MRI should not be used as a routine screening tool and should be reserved for clinical situations in which the diagnosis remains in doubt; that the EIP was not presenting with signs and symptoms of cervical radiculopathy; there were no long tract signs appreciated; and there was no mention of a

dermatomal pain distribution, dermatomal sensory deficit, myotomal strength deficit, or reflex abnormality. Dr. Smith opined that in the absence of such findings, necessity is not established in the acute introduction.

Dr. Smith cited to the American College of Radiology ACR Appropriateness Criteria for MRI.

Applicant's Rebuttal Evidence

The October 13, 2020 evaluation report by Dr. Ford noted that the EIP was already receiving physical therapy, which improved the pain in the neck, low back, and shoulders. With respect to the cervical spine, examination revealed diminished deep tendon reflexes at the C5 and C6 dermatomes. Spurling's test was positive on the right. There were findings of restricted ROM in flexion, extension, right rotation, and left rotation. The diagnosis of the cervical spine consisted of cervical radiculopathy, cervical disc displacement, cervical dorsopathy/facet syndrome, cervicalgia, and cervical sprain of ligaments.

Dr. Ford specifically recommended the MRI of the cervical spine to rule out herniated nucleus purposes/soft tissue injury. Dr. Ford recommended continued physical therapy and chiropractic care, with follow-up to occur in 2-4 weeks.

The MRI report for the MRI of the cervical spine performed on November 9, 2020 revealed straightening of the normal lordosis and a central disc herniation at C4-C5.

LEGAL STANDARDS FOR MEDICAL NECESSITY

It is well established that the burden is on the insurer to prove that the medical treatment was medically unnecessary. See *A.B. Med. Servs., PLLC v GEICO Ins.*, 2 Misc 3d 26 (App Term, 2d & 11th Jud Dists 2003); *King's Med. Supply Inc. v Country-Wide Ins. Co.*, 5 Misc 3d 767, 772.

A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof

which sets forth a factual basis and a medical rationale for denying the claim. See *Amaze Med. Supply Inc. v Eagle Ins. Co.*, 2 Misc 3d 128(A) (App Term, 2d & 11th Jud Dists 2003); *King's Med. Supply Inc. v Country-Wide Ins. Co.*, 5 Misc 3d 767, 771.

Where 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 *Prince, Richardson on Evidence* §§ 3-104, 3-202 (Farrell 11th ed)); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc 3d 131(A) (2006).

Moreover, a peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards. *CityWide Social Work & Psychological Servs. v Travelers Indem. Co.*, 3 Misc.3d 608, 612 (Civ Ct, Kings County 2004). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *CityWide Social Work & Psychological Servs. v Travelers Indem. Co.*, 3 Misc 3d at 616, *supra*.

DECISION

Having reviewed the evidence presented, I find in favor of Applicant. Dr. Smith made a couple of errors and/or omissions in her summary of the October 13, 2020 evaluation by Dr. Ford. The EIP complained of neck pain. Dr. Smith makes no reference to the complaint of the neck pain as reported by the EIP. Additionally, the EIP reported that he was already receiving physical therapy at that time, which improved the pain. Moreover, Dr. Smith stated that Dr. Ford did not document that conservative treatment, including physical therapy, was recommended at the time of the visit of October 13, 2020. This statement is false. Under the Recommendations section on page 4 of the October 13, 2020 report, Dr. Ford expressly stated that the EIP was to continue physical therapy and chiropractic treatment.

Additionally, while Dr. Smith cited to certain guidelines, those guidelines appear to support the use of MRI in evaluation of whiplash injuries when neurological findings are present. Dr. Ford evaluated the EIP on October 13, 2020. The EIP had already attempted some physical therapy. Dr. Ford noted that the examination revealed diminished deep tendon reflexes at the C5 and C6 dermatomes. Dr. Smith stated that there were no signs or symptoms of cervical radiculopathy; however, the Spurling's test, which is indicative of nerve root compression that causes cervical radiculopathy, was positive on the right side.

Further, there were findings of restricted ROM in flexion, extension, right rotation, and left rotation. Dr. Ford's diagnoses consisted of cervical radiculopathy, cervical disc displacement, cervical dorsopathy/facet syndrome, cervicgia, and cervical sprain of ligaments.

The EIP was approximately five weeks post-accident at the time that the MRI was performed. The evidence shows that the EIP had commenced conservative treatment, consisting of both physical therapy and chiropractic care, before presenting to Dr. Ford with continued complaints of pain in the cervical spine with continued positive objective findings and neurological deficits. I am not persuaded by Dr. Smith's peer review report in this case. Respondent's denial should not be sustained.

Accordingly, Applicant's claim is hereby granted in its entirety.

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	Status
	Personal	11/09/20 -		Awarded:

	Health Imaging	11/09/20	\$787.53	\$787.53
Total			\$787.53	Awarded: \$787.53

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/05/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)* (stay of interest).

C. Attorney's Fees

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

Respondent shall also pay Applicant an attorney's fee in accordance with *11 NYCRR 4.6*.

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

07/27/2021
(Dated)

Ioannis Gloumis

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:
99cf8d5fc804e14013bacc108880760a

Electronically Signed

Your name: Ioannis Gloumis
Signed on: 07/27/2021