

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

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|--|--------------------------|-----------------|
| David Bababekov d/b/a Healing Services Inc. (Applicant) | AAA Case No. | 17-20-1158-0009 |
| - and - | Applicant's File No. | n/a |
| | Insurer's Claim File No. | 3904022-002 |
| New South Insurance Company (Respondent) | NAIC No. | 12130 |

ARBITRATION AWARD

I, Mary Anne Theiss, 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: Claimant

1. Hearing(s) held on 07/22/2021
Declared closed by the arbitrator on 07/22/2021

Robert Cippitelli, Esq. from Law Offices of Eitan Dagan (Elmhurst) participated in person for the Applicant

Peter Pagones, Esq. from Law Offices of Bobbi J. Vilacha participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,001.04**, 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 durable medical equipment associated with a decompression of the shoulder and arthroscopy based upon a peer review of Stuart Springer, M.D. indicating that it was not medically necessary was justified. The amount in question is \$3,001.04.
4. Findings, Conclusions, and Basis Therefor
The Claimant was a forty-four-year-old female involved in a motor vehicle accident as a pedestrian on June 5, 2019. The Claimant lost consciousness

and sustained injuries to her neck, bilateral shoulders, low back, right hip, and bilateral legs. Following the accident, the Claimant was taken to the emergency room of Kings County Hospital where she was evaluated and released.

On November 19, 2019, the Claimant underwent a left shoulder arthroscopy, debridement, and partial bursectomy performed by Maxim Tyorkin, M.D. After the surgical procedure, the Claimant was prescribed a Water Circulating Pump (CTU) and a Continuous Passive Motion (CPM) device for the period November 26, 2019, to December 23, 2019.

The Carrier requested Stuart Springer, M.D. do a peer review of the medical necessity of the surgical procedure and resulting durable medical equipment provided, along with the surgery. Dr. Springer generated a report dated December 23, 2019. He went through the history of the Claimant and noted that the Claimant received thirty nine acupuncture treatments from June 12, 2019, to November 18, 2019 for the neck, upper back, middle back, and lower back and none of the sessions were for the Claimant's left shoulder. It was noted when on her visit on June 13, 2019, with Vladimir Onefater, M.D. that the Claimant had limited movement in the shoulder and painful range of motion. Her Impingement Test was positive.

The Claimant had forty-one physical therapy sessions from June 13, 2019, to November 18, 2019, for the neck and lower back and none of the sessions were for the left shoulder. The Claimant received twenty-nine chiropractic sessions from June 18, 2019, to November 7, 2019, for the neck, middle back, and low back and none of them were for the left shoulder. The MRI of July 1, 2019, indicates that the Claimant had a partial tear. On July 10, 2019, the Claimant reported 7-8/10 on the Pain Scale to Maxim Tyorkin, M.D.

Dr. Springer indicated that the Claimant had left shoulder pain, the records submitted show that there was no conservative care in the form of physical therapy or acupuncture treatment. Additionally, there was no treatment with steroid injection. He noted that the exam report dated November 16, 2019, by Vijay Sidhwani, D.O. indicated a diagnosis of left shoulder sprain, that was resolved. It is noted that Vijay Sidhwani is the doctor that did an independent pain management exam on behalf of the Carrier.

It was Dr. Springer's opinion that the left shoulder arthroscopy and associated services performed on November 19, 2019 were not medically necessary and neither was the durable medical equipment.

A review of the medical records indicates that there was a **right** shoulder ultrasound done by Vladimir Onefater, M.D. In the measurement of muscle strength, there's pain on extension in the **right** shoulder, pain on abduction

in the left shoulder and pain on extension and flexion in the **right** shoulder. There's also a note that the right shoulder pain is "very painful" with full range of motion. This is not noted for the left shoulder pain. Under the diagnostic plan there is musculoskeletal US of the **right** shoulder. There is no rebuttal to the peer review. A review of the office notes are very inconsistent in terms of the treatment to the left shoulder. It appears that most of the treatment is to the right shoulder.

A health provider's proof of a properly submitted statutory claim form, or its substantial equivalent, establishes a prima facie case of medical necessity. *Stephen Fogel Psychological, P.C. v. Progressive Casualty Ins. Co.*, 7 Misc.3d 18, 793 N.Y.S.2d 661 (App. Term 2d & 11th Dists. 2004), rev'd on other grounds, 35 A.D.3d 720, 827 N.Y.S.2d 217 (2d Dept. 2006). The Applicant successfully met the prima facie case.

In order to make out a prima facie case of lack of medical necessity, a peer review must discuss the generally accepted medical practice (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) and opine that the treatment or services would be ineffective or that the insurer's preferred health care treatment or lack of treatment would lead to an equally good outcome. *Millennium Radiology, P.C. v. New York Central Mutual Fire Ins. Co.*, 23 Misc.3d 1121(A), 886 N.Y.S.2d 71 (Table), 2009 N.Y. Slip Op. 50877(U), 2009 WL 1261666 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Apr. 30, 2009).

The Carrier, in coming forth with the peer review then shifts the burden to the Applicant to come forward with rebuttal, which they did not and the office notes were inconsistent and did not support the procedure rendered.

I find that based on all the evidence before me the 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 Madison

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

07/30/2021

(Dated)

Mary Anne Theiss

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:
0f320ef172edfa711d2900e66608a933

Electronically Signed

Your name: Mary Anne Theiss
Signed on: 07/30/2021