

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

K&S Surgical & Anesthesia Group LLC
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-20-1155-6320

Applicant's File No. none

Insurer's Claim File No. 198039482

NAIC No. Self-Insured

ARBITRATION AWARD

I, Robyn McAllister, 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 09/21/2021
Declared closed by the arbitrator on 09/21/2021

Mark Fenelon, Esq. from The Law Offices of Hillary Blumenthal P.C. (Melville) participated for the Applicant

Todd Hyman, Esq. from Brand Glick & Brand, Esqs. participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,280.60**, 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 Respondent properly denied Applicant's claim for performing manipulation under anesthesia of the spine and pelvis for Assignor (KW), a 28 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on August 30, 2019, based on a peer review by Dr. Cyrus Kao.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1280.60 for the surgeon's and assistant's fees for performing manipulation under anesthesia ("MUA") of the spine and pelvis on December 11, 2019 for Assignor (KW), a 28 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on August 30, 2019. Respondent timely denied Applicant's claim predicated on a peer review dated January 14, 2020 by Dr. Cyrus Kao.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent acknowledged timely receipt of Applicant's bills on December 26, 2019. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the services rendered were not medically necessary. I disagree. I was not persuaded by the peer review report by Dr. Kao, submitted by Respondent in support of its denials.

Dr. Kao noted that following the accident, Assignor "was seen by Dr. Sudha Patel. The claimant reported neck pain, mid back, low back pain, and left shoulder pain. The claimant had chiropractic care, physical therapy and acupuncture. The claimant had MRI of the cervical and lumbar spine on 09/10/2019. The claimant was prescribed medications including Lidocaine 5% ointment Diclofenac sodium 3% gel."

Dr. Kao stated that "manipulation under anesthesia may be recommended as a treatment option for primary adhesive capsulitis following failure of conservative management for at least 6 months. Studies have shown poorer outcomes of manipulation under anesthesia (MUA) following shoulder surgery. Manipulation under anesthesia may also be recommended for clear cut lumbar adhesions or hip adhesive capsulitis."

He also noted that MUA can be a treatment for AC in the hip and that "manipulation under anesthetic (MUA) and injection is an established treatment method for frozen shoulder."

Dr. Kao asserted that "a diagnosis of manipulation under anesthesia is made based off subjective clinical findings such as disabling pain and stiffness which significantly limits either the shoulder, low back, pelvis, or hip function. Additionally, they should be corroborated by objective clinical findings and supported by diagnostic imaging which support findings of adhesion, fibrosis, or capsular adhesions in the lumbar spine, shoulder, or hip. In this particular case, while the claimant does show reduction in range of motion, the clinical examination is not supported by diagnostic imaging which do not support that there are any fibrosis or adhesive capsular findings in the pelvis or spine. As such, this procedure of MUA of the spine, pelvis is not medically necessary."

In support of its claim, Applicant submitted the documents contained in the ADR Center including examination report and procedure report by Dr. Ani Kalfayan, report by Dr. Sudha Patel, and MRI reports. In addition, Applicant submitted a rebuttal by Dr. Kalfayan on September 3, 2021, less than three weeks prior to the hearing. Respondent submitted its peer review on March 2, 2020, almost eighteen months earlier. Thus, Applicant had ample time to submit a rebuttal. Applicant failed to provide a valid excuse for its failure to do so and therefore, in my discretion, I have not considered the late rebuttal. *See* 11 NYCRR 65-4.2(b)(3)[iv].

Nonetheless, I was persuaded by the medical evidence that the services were warranted. Dr. Kalfayan's report dated November 27, 2019 noted that Assignor had subjective complaints of neck, low back, left shoulder and left ankle pain and that the pain was interfering with his ADLs. Dr. Kalfayan's examination revealed tenderness, trigger points and decreased ranges of motion in the cervical and lumbar spine and left shoulder with reductions in deep tendon reflexes, muscle strength and hypoesthesia in the upper and lower extremities. In addition, there was positive orthopedic testing in the cervical and lumbar spine, pelvis and left shoulder. Dr. Kalfayan recommended the MUA procedures.

The same report explained the necessity for the MUA of the spine and pelvis and discussed various articles supporting the efficacy for MUA. Dr. Kalfayan concluded that:

- 1. The patient has undergone 10 weeks of conservative care to include physical therapy and specific chiropractic adjustments. To date, the patient has responded only slightly to all forms of therapy. This patient falls within the standard of acceptable conditions that have responded favorably to MUA as documented in other cases and referenced in studies throughout the country. I am recommending MUA as an alternative to prolonged conservative care or possible future surgical intervention.*
- 2. Based on the criteria established by the National Academy of Manipulation Under Anesthesia Physician guidelines, this patient is a prime selective candidate for the MUA procedure. This decision is also based on the fact that all other means of conservative treatments such as physical therapy and chiropractic adjustments were exhausted and the patient is still experiencing chronic pain.*
- 3. Based on the initial examination as well as the objective MRI evaluations and neurological testing, it was determined that Chiropractic spinal manipulation was both medically indicated and medically necessary in order to reduce the biomechanical dysfunction of the vertebral motor unit (subluxation complex). Conservative care to date has been effective, however a plateau has been reached reflecting minimal further improvement.*

4. *The Goals of MUA include restore function, reduce pain to pre incident status, increases ROM, break up fibrous adhesions and restore ADLS functionality*

Thus, while Dr. Kao's peer review was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Kao's assertions. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006).

Moreover, the treating physician's opinion should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the services rendered.

Accordingly, Applicant is awarded \$1280.60, the entirety of its claim.

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.

		Claim	
--	--	--------------	--

Medical		From/To	Amount	Status
	K&S Surgical & Anesthesia Group LLC	12/11/19 - 12/11/19	\$1,103.97	Awarded: \$1,103.97
	K&S Surgical & Anesthesia Group LLC	12/11/19 - 12/11/19	\$176.63	Awarded: \$176.63
Total			\$1,280.60	Awarded: \$1,280.60

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/03/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from February 3, 2020, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee of 20% of the claim awarded above plus interest in accordance with 11 NYCRR 65-4.6.

- 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 Westchester

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

09/24/2021
(Dated)

Robyn McAllister

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:
b93ac2229606452ee026e6b43b2ae89c

Electronically Signed

Your name: Robyn McAllister
Signed on: 09/24/2021