

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Bronx PC
(Applicant)

- and -

Stillwater Property and Casualty Insurance
Company f/k/a Tri-State Consumer Insurance
Company
(Respondent)

AAA Case No. 17-20-1176-3613

Applicant's File No. RamosMau

Insurer's Claim File No. 01077079

NAIC No. 23060

ARBITRATION AWARD

I, Kent Benziger, 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: M.R.

1. Hearing(s) held on 09/20/2021
Declared closed by the arbitrator on 09/20/2021

Michael Tomforde, Esq. from Dash Law Firm, P.C. participated for the Applicant

Joseph Armao, Esq. from Stillwater Property and Casualty Insurance Company f/k/a Tri-State Consumer Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,571.80**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant has stipulated to amend the amount in dispute to \$1,571.80 pursuant to the Radiology Ground Rule for multiple diagnostic studies performed on the same day.

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

3. Summary of Issues in Dispute

On January 3, 2019, the Assignor/Eligible Injured Party, a 49-year-old male, was, by history, involved in a motor vehicle accident. The services in dispute involve cervical and lumbar MRI studies performed on February 16, 2020. The Respondent denied

reimbursement based on an independent medical examination, (hereinafter referred to as an IME) performed by Dr. Joseph Margulies.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

4. Findings, Conclusions, and Basis Therefor

On January 3, 2019, the Assignor/Eligible Injured Party, a 49-year-old male, was, by history, involved in a motor vehicle accident. Following the accident, the Assignor was reportedly not evaluated at an emergency room. The Assignor then followed up with a Dr. McGee, D.C. for complaints of neck, upper back, lower back and left knee pain. Through an examination on January 6, 2019 the Assignor had spasm, and limited range of motion. Cervical compression was positive as was the McMurray's test. Straight leg raising was positive at 30 degrees. Physical therapy and chiropractic were commenced. The Assignor treated with a variety of specialists, cervical and lumbar MRI studies were performed in February of 2019. An upper extremity EMG/NCV studies revealed findings consistent with cervical radiculopathy while a lower extremity study revealing findings consistent with S1 radiculopathy. On April 30, 2019, left knee arthroscopy was performed with a post-operative diagnosis of longitudinal tear of the anterior cruciate ligament with plica, peripheral tear of the medial meniscus and a peripheral tear of the midportion lateral meniscus, chondral effect medial patellar. On September 10, 2019, Dr. Marini performed a "left L4-5, L5-S1 selective nerve root (transforaminal under fluoroscopy) for diagnosis of lumbar radiculopathy." On October 3, 2019, the Assignor was examined by Dr. Jeffrey Cohen and administered PRP injections. His prior exam had revealed patellofemoral crepitus, moderate swelling and joint effusion.

On January 15, 2020, the Assignor was evaluated at the offices of New York Spine Specialist. The report noted the Assignor had a significant previous history of neck and back injuries. The previous treatment included physical therapy, surgery and trigger point injections. The Assignor's complaints included radiating neck and low back pain. On examination, range of motion was reduced in the lumbar and cervical spine. Motor strength was 4/5 in various muscle groups. Reflexes were listed as abnormal and sensation was listed as altered in the bilateral in the L3-, L4, L5 and S1 dermatomes as well as bilaterally in the C4, C5, C6 and C7 dermatomes. Prior cervical and lumbar MRI studies were interpreted as revealing HNP at C2-C7 with cord compression at C4/5 and

lumbar HNP at L2-4 with impingement and status post-surgery. The diagnoses included HNP with myelopathy, cervical nerve root impingement and lumbar disc herniations with radiculopathy.

On February 16, 2020, a lumbar MRI was performed which was interpreted as revealing bulging disc at L1-2 without stenosis or interval change from 2/8/19, bulging disc at L2/3 with left foraminal herniation and right paracentral herniation with punctate annular tear (unchanged), bulging disc at L3-4 with biforaminal encroachment, left foraminal herniation impingement upon left L3 root, mild bilateral foraminal stenosis, patulous spinal canal at postoperative L4/5 level, patulous spinal canal at postoperative level L5/s1 and right foraminal herniation at S1/2 with impingement upon right S1 root. On the same date a cervical MRI was performed with findings interpreted as revealing extruded right paracentral herniation at C2/3 as seen previously, central herniation at C3/4 with new superior extrusion, impingement upon cord, central and left paracentral herniation at C4/5 with impingement, central herniation at C5/6 with thecal sac indentation and annular tear component impinging upon C7 root, right paracentral herniation at C6/7 with thecal sac indentation, now impinging upon cord, annular tear no longer identified, bulging disc at C7/T1 with limited biforaminal encroachment, right paracentral annular tear, increased in size now impinging upon cords.

Denial/IME. The Respondent issued a denial for the claim for the cervical and lumbar MRI studies based on an independent medical examination (hereinafter referred to as an IME) performed by Dr. Joseph Margulies. On November 13, 2019, the Assignor was examined at the Respondent's request by Dr. Joseph Margulies. The Assignor's past medical history was significant for injuries to his back, knee and shoulders in 2010, back surgery in 2010, right shoulder surgery in 2005, left shoulder surgery in 2014 and right knee surgery. At the time of the exam, the Assignor complained of pain in his neck, back and left knee. The Assignor had a left knee arthroscopy on April 30, 2019. The Assignor walked with a cane. On examination, Dr. Margulies found range of motion was full in the cervical and lumbar spine as well as both knees. All orthopedic and neurological tests were negative. The diagnoses were of cervical, lumbar sprains and left knee (status post arthroscopy) all resolved. Based on the examination, the Respondent denied further orthopedic and related treatment as of December 12, 2019.

Analysis. A presumption of medical necessity attaches to a Respondent's admission of the Applicant's timely submission of proper claim forms, and the burden then switches to the Respondent to demonstrate the lack of medical necessity. *Acupuncture Prime Care, P.C. v. State Farm Mutual Auto Ins.*, 2007 N.Y. Slip Op. 522273U; 2007 N.Y. Misc. LEXIS 7860 (Dist. Ct. Nassau Co. 12/3/2007); *A.B. Medical Services, PLLC v. N.Y. Central Mutual Fire Ins. Co.*, 7 Misc. 3d 1018(a), 801 N.Y.S.2d 229 (Civil Ct. Kings Co. 2005); *Citywide Social Work & Psychological Services v. Travelers Indemnity*, 3 Misc.3d 608, 609 (Civil Ct. Kings Co. 2004). Respondent thus bears "both the burden of production and burden of persuasion with respect to the medical necessity of the treatment or testing for which payment is sought". See: *Bajaj v. Progressive Ins. Co.* 14 Misc.3d 1202(A) (N.Y.C. Civ. Ct 2006). The quantum of proof necessary to

meet Respondent's burden, at the bare minimum, is to "establish a factual basis and medical rationale for the lack of medical necessity of Applicant's services. Id. See also: A.B. Medical Services, supra. As to treatment including chiropractic care, the Respondent must document that the treatment was no longer benefiting the claimant and was not providing curative or significant and quantifiable palliative benefits. Hobby v. CNA Ins. Co., 267 A.D.2d 1084, (4 Dept., 1999).

As a finding of fact, Dr. Margulies' examination is not persuasive. The Assignor had a complex medical history with numerous prior surgeries as well as knee arthroscopy following this accident. He was receiving extensive treatment in the year following the accident including numerous diagnostic studies and trigger point injections. The treating providers, both prior and subsequent to Dr. Margulies examination, noted positive findings of reduced range of motion, as well as positive orthopedic and neurological signs. These findings are more credible and directly contradict Dr. Margulies findings. The MRI studies reveal numerous herniated discs and impingement, and in some portions of the studies - not all - progressive changes were noted from February 2019 to February 2020. Dr. Margulies failed to discuss these numerous findings in this patient who had a significant prior medical history. The reports from an independent medical examination must contain not only the results of a physical examination, but also incorporate, discuss and review the patient's medical history including all positive clinical and diagnostic findings. Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co., 19 Misc.3d 1139(A), (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008). The Respondent has failed to sustain its burden of proof of lack of medical necessity. Nir v. Allstate Insurance Company, 7 Misc.3d 544, 546, 547 (2005). Applicant is awarded reimbursement for the treatment in dispute.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

APPLICANT IS AWARDED REIMBURSEMENT OF \$1,571.80, TOGETHER WITH INTEREST AND ATTORNEYS' FEES.

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 | Amount Amended | Status |
|---------|--------------------------|---------------------|--------------|----------------|---------------------|
| | Stand Up MRI of Bronx PC | 02/08/20 - 02/08/20 | \$912.00 | \$912.00 | Awarded: \$912.00 |
| | Stand Up MRI of Bronx PC | 02/08/20 - 02/08/20 | \$659.80 | \$659.80 | Awarded: \$659.80 |
| Total | | | \$1,571.80 | | Awarded: \$1,571.80 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/15/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

- 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 Orange

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

09/29/2021
(Dated)

Kent Benziger

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:
31ccb62d83473a3e8383fa758b12b2c6

Electronically Signed

Your name: Kent Benziger
Signed on: 09/29/2021