

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All City Family Healthcare Center
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-20-1184-1458

Applicant's File No. SS-154839

Insurer's Claim File No. 042314694

NAIC No. 36447

ARBITRATION AWARD

I, Elyse Balzer, 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: JM

1. Hearing(s) held on 09/08/2021
Declared closed by the arbitrator on 09/08/2021

Sabine Sciariotto, Esq from Samandarov & Associates, P.C. participated for the Applicant

Herman Buchanan from LM General Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 9,908.31**, 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

This arbitration is based on claims for facility fees for left knee surgery performed on 7/10/2020 on the 34 year old male eligible injured person JM who sustained injuries while a rear seat passenger in a vehicle involved in an accident on 3/22/2020.

The parties agreed that the only issue was medical necessity, that is, whether respondent had proven the lack of medical necessity of left knee surgery based on a peer review by Dr. Stuart Springer.

Respondent did not raise any issue of exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via ZOOM, as all arbitration hearings have been conducted telephonically or via ZOOM since March 15, 2020 due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

On 7/10/2020, at applicant's facility in Brooklyn, New York, Dr. Howard Baum, MD performed left knee surgery on JM. His assistant was Pawel Hanulewicz, PA.

Respondent denied payment for applicant's facility fees for 7/10/202 based on an 8/28/2020 peer review by Dr. Stuart Springer, MD.

Respondent presented Dr. Springer's peer review and his addendum.

These documents show that Dr. Springer reviewed numerous medical records and formulated a complete & comprehensive factual analysis.

Dr. Springer maintained that at the time surgery was performed JM had not received adequate conservative care to resolve his left knee complaints. Dr. Springer pointed out that there was no failure of conservative care such that surgical intervention would be appropriate and that there was no documentation was presented to show catching or locking.

In my opinion, the peer review carried respondent's prima facie burden of proof, by a fair preponderance of the credible evidence, to establish the lack of medical necessity of the disputed surgery.

Applicant submitted the operative report of 7/10/2020. Applicant did not submit any medical records or medical reports showing what conditions, if any, led up to the left knee surgery. There were no documents submitted by Dr. Baum to explain why he performed left knee surgery on JM. Applicant did not present a letter of medical necessity, or a rebuttal to respondent's peer review.

Applicant has not presented, or made an offer of proof, of a rebuttal, letter of medical necessity, affidavit, testimony or other proof which would specifically address the points raised in the peer review.

Applicant relies on the argument that the peer review did not contain a sufficiently stated generally accepted standard of care.

However, my reading of the peer review convinces me that a standard of care was adequately stated and that the performance of the disputed services deviated from generally accepted medical professional standards. Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 796 N.Y.S.2d 857, 2005 NY Slip 25090 (Civil Ct, Kings Co. 2005); see, Alliance Medical Office P.C. v. Allstate Ins. Co., 196 Misc.2d 268, 764 N.Y.S.2d 341 (Civil Ct, NY 2003) and that such disputed services were not medically necessary.

In A. Khodadadi Radiology PC v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131 (A), 841 N.Y.S.2d 824 (App Tm, 2nd & 11th Districts, 2007), the court stated: "Defendant's peer review report established prima facie that there was no medical necessity for the MRIs performed by plaintiff, which evidence was unrebutted, thereby entitling defendant to the relief it sought below (see Amaze Med. Supply v Eagle Ins. Co., 2 Misc 3d 128[A], 2003 NY Slip Op 51701[U] [App Term, 2d & 11th Jud Dists] ["(T)he insurer . . . if not precluded, may rebut the inference (of medical necessity) by proof in admissible form establishing that the health benefits were not medically necessary. . . . If not refuted by the no-fault benefits claimant, such proof may entitle the insurer to summary judgment"])."

The Appellate Division, 2nd Department has stated what is necessary to prove lack of medical necessity in Fine Healing Acupuncture PC v. Country-Wide Ins. Co., 33 Misc.3rd 55 (App Tm, 2nd Dep't 2011):

As there was a factual basis and medical rationale for the doctor's determination that there was a lack of medical necessity for the acupuncture services provided to plaintiff's assignor (see Delta Diagnostic Radiology, P.C. v Integon Natl. Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51502[U] [App Term, 2d, 11th & 13th Jud Dists 2009]; Delta Diagnostic Radiology, P.C. v American Tr. Ins. Co., 18 Misc 3d 128[A], 2007 NY Slip Op 52455[U] [App Term, 2d & 11th Jud Dists 2007]), the burden shifted to plaintiff to rebut defendant's prima facie showing (see Alur Med. Supply, Inc. v Clarendon Natl. Ins. Co., 27 Misc 3d 132[A], 2010 NY Slip Op 50700[U] [App Term, 2d, 11th & 13th Jud Dists 2010]; Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009]).

See, also, Bronze Acupuncture P.C. v. Mercury Ins. Co., 24 Misc.3d 126 (A), 2009 NY Slip Op 51219(U) (App. Tm, 2nd Dep't 2009).

Applicant has not offered, in my opinion, any competing medical opinion or other proof which refutes or rebuts the expert opinion contained in the peer review. Eden Med., P.C. v Progressive Cas. Ins. Co., 19 Misc 3d 143[A], 2008 NY Slip Op 51098[U] [App Term, 2d & 11th Jud Dists 2008]; Delta Diagnostic Radiology P.C. v. Progressive Cas. Ins. Co., 2008 NY Slip 52450(U), 21 Misc.3d 142(A)(App Tm, 2nd Dep't 2008).

In my opinion, the peer review carries respondent's burden of proof to show the lack of medical necessity for the disputed services and applicant has failed to refute the opinion of the peer reviewer. In my opinion applicant has failed to produce sufficient rebuttal evidence to prove medical necessity for the services rendered. Citywide Social Work & Psy Serv PLLC v. Allstate Ins. Co., 20 Misc.3d 1124(A), (Dist Ct, Nassau Co 2008); see also, Delta Diagnostic Radiology, P.C. v. American Tr. Ins. Co., 18 Misc.3d 128(A)(App Tm, 2nd Dep't 2007); Delta Diagnostic Radiology PC v. Progressive Cas. Ins. Co., 21 Misc 3d 142(A) (App Tm, 2nd & 11th Jud Dists 2008).

Based on the above, applicant's 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 Westchester

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

09/30/2021
(Dated)

Elyse Balzer

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:
dd601582c38b17309135ce2f093d09a1

Electronically Signed

Your name: Elyse Balzer
Signed on: 09/30/2021