

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of East Elmhurst
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-19-1148-6854

Applicant's File No. N/A

Insurer's Claim File No. 84245-01

NAIC No. 24309

ARBITRATION AWARD

I, Claire Gallagher, 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 12/15/2021
Declared closed by the arbitrator on 12/15/2021

Jared Mallimo, Esq. from The Licatesi Law Group, LLP participated by telephone for
the Applicant

Mark Zemcik, Esq. from Law Offices of Rubin & Nazarian participated by telephone for
the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,399.48**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

Applicant has established its prima facie case for entitlement to No-Fault compensation for its claim.

Respondent's denial was timely issued.

The interest date is 11/20/19.

3. Summary of Issues in Dispute

At issue is whether Respondent properly denied benefits based upon a lack of medical necessity.

This dispute arises from the underlying automobile accident which occurred on 05/25/19 in which Assignor, a 32-year-old-female, was involved as a pedestrian. Applicant submitted a claim to Respondent for MRIs of the cervical and thoracic spine, Date of Service 07/31/19, and Respondent denied payment based on a lack of medical necessity based on a Peer Review Report by Dr. Alan P. Wolf dated 10/09/19.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all timely submitted relevant documents contained in the ADR Center record maintained by the American Arbitration Association for this case, and have considered the oral arguments presented at the hearing in this matter. As stipulated to by the parties, Applicant has established its prima facie case of entitlement to No-Fault compensation for its claim. See *Mary Immaculate Hosp. v. Allstate. Ins. Co.*, 5 AD3d 742 (2d Dept 2004). Once an applicant establishes its prima facie case, the burden then shifts to the insurer to prove its defense. See *CityWide Social Work & Psychological Servs. v. Travelers Indem. Co.*, 3 Misc 3d 608 (Civ Ct, Kings County 2004).

Respondent based its denial of the claim on the above-referenced Peer Review Report. The Report listed the medical records reviewed, and summarized Assignor's relevant medical history. The Peer Reviewer summarized the findings of the 06/18/19 examination. The Peer Reviewer stated that it would be appropriate for the treating physician to give the claimant a chance to respond to the treatment program for at least six weeks and then conduct a reevaluation. Here, the MRIs were ordered only 10 days after the examination, which the Peer Reviewer stated was premature. The Report noted that there were no red flag findings reported to substantiate the need for early MRI. The Report set forth a standard of care with respect to MRI after a motor vehicle accident and said that a physical therapy program should be undertaken for the six weeks and that if the patient did not respond, the MRI might be indicated. The Report noted that the results of the MRI were not expected to impact Assignor's course of treatment, for example, with epidural steroid injections and/or surgery.

At the hearing of this matter, counsel for Applicant challenged the sufficiency and persuasiveness of the Peer Review Report on the grounds that on page 4 of the Report, the Peer Reviewer states that the MRI conducted on a different date by a different provider was not medically necessary. However, the following paragraph cites to the correct date of service and the correct provider. I find that the error cited to by Applicant is a *de minimis* error and that, as asserted by

Respondent, the Report accurately cites to Assignor's medical records In discussing the lack of medical necessity for the MRIs.

I find that Respondent has met its burden of proof regarding lack of medical necessity for the MRIs at issue, based upon the Peer Review Report. The Report detailed the medical rationale for this opinion, with reference to applicable medical standards, and analyzed the facts of the claim in this case. The Report is therefore sufficient to demonstrate lack of medical necessity. Where the insurer presents sufficient evidence to establish a defense based on a lack of medical necessity, the burden then shifts to the applicant to present its own evidence of medical necessity. *See West Tremont Med. Diagnostic P.C., v. GEICO Ins. Co.*, 13 Misc 3d 131(A), 2006 Slip Op 51871 (U) (App Term 2d Dept 2006).

Applicant submitted a Rebuttal by Dr. John Ventrudo dated 01/10/20. I find that the Rebuttal relied on by Applicant as evidence of medical necessity does not serve to adequately rebut the conclusions set forth in the Peer Review Report. The Rebuttal sets forth a number of indicia indicating that the MRI are medically necessary, and also sets forth a number of findings on examination. However, I find that the Rebuttal lacks persuasiveness. The Rebuttal does not adequately or persuasively explain why the numerous findings on exam listed therein correlate to the multiple indicia for ordering MRIs set forth in the Rebuttal. Furthermore, the Rebuttal author was not the treating physician, and therefore, I find that the explanations as to why the tests were ordered lacks persuasiveness. Lastly, the report of the examination at which the MRIs were ordered stated that Assignor "*has not responded to an adequate course of conservative management,*" however, is not clear from this examination whether Assignor in fact had commenced conservative treatment, nor was any purported lack of progress in any such conservative treatment discussed in the report. Therefore, I find that Respondent has sustained its basis for the denial of this claim.

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 Nassau

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

12/16/2021
(Dated)

Claire Gallagher

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:
7994cc82b31264fc3b8a9c45f05b3707

Electronically Signed

Your name: Claire Gallagher
Signed on: 12/16/2021