American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nexray Medical Imaging PC d/b/a Soul Radiology (Applicant)	AAA Case No.	17-20-1180-0334
	Applicant's File No.	RFA20-288222
- and -	Insurer's Claim File No.	AMS3308-01
	NAIC No.	Self-Insured
State National Insurance Company (Respondent)		

ARBITRATION AWARD

I, Kihyun Kim, 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: the Assignor

1. Hearing(s) held on 11/18/2021
   Declared closed by the arbitrator on 11/18/2021

   Alexander Mun, Esq. from Russell Friedman & Associates LLP participated for the Applicant

   Donald Kavanagh, Esq. from Bruce Somerstein & Associates, P.C. participated for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,450.45**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulated to Applicant's prima facie case and to Respondent's timely denials.

   The parties also stipulated that Applicant's billing is consistent with the fee schedule.

3. Summary of Issues in Dispute

   The issue presented is whether the MRIs were medically necessary.

   The Assignor (RG) was a 62-year-old male who was the driver of an automobile that was involved in an accident on March 2, 2020. Applicant seeks reimbursement in the

aggregate amount of $2,450.45 for an MRI of the left shoulder of the Assignor conducted on June 1, 2020, and MRIs of the lumbar spine and cervical spine of the Assignor conducted on June 3, 2020. Reimbursement was denied based on the respective peer reviews by Jason S. Lipetz, M.D., dated June 18, 2020, and Robert A. Sohn, D.C., dated June 18, 2020.

4. Findings, Conclusions, and Basis Therefor

This arbitration was conducted using the documentary submissions of the parties contained in the ADR Center, maintained by the American Arbitration Association. I have reviewed the documents contained therein as of the closing of the hearing, and such documents are hereby incorporated into the record of this hearing. The hearing was held by Zoom video conference. Both parties appeared at the hearing by counsel, who presented oral argument and relied upon their documentary submissions. There were no witnesses.

At the hearing, Respondent acknowledged receipt of Applicant's bills in this matter and the parties stipulated to Applicant's prima facie case and to Respondent's timely denials. The parties also stipulated that Applicant's billing is consistent with the fee schedule.

The Assignor was a 62-year-old male who was injured in an automobile accident on March 2, 2020. Following the accident, the Assignor was taken to the hospital, where he was evaluated, treated and released the same day. The Assignor later sought additional treatment and testing for his injuries from various providers, who started him on a course of conservative treatment including physical therapy, acupuncture and chiropractic care.

On June 1, 2020, the Assignor underwent an MRI of the left shoulder referred by Michael Jacobi, D.O., on March 9, 2020. Applicant billed Respondent for the MRI and Respondent timely denied Applicant's claims based upon the peer review, dated June 18, 2020, by Jason S. Lipetz, M.D., who found the MRI to be medically unnecessary.

On June 3, 2020, the Assignor underwent MRIs of the lumbar spine and cervical spine referred by Alexander Mostovoy, D.C., on March 6, 2020. Applicant billed Respondent for the MRIs and Respondent timely denied Applicant's claims based upon the peer review, dated June 18, 2020, by Robert A. Sohn, D.C., who found the MRIs to be medically unnecessary.

Applicant now seeks reimbursement in the aggregate amount of $2,450.45 for an MRI of the left shoulder of the Assignor conducted on June 1, 2020, and MRIs of the lumbar spine and cervical spine of the Assignor conducted on June 3, 2020.

Legal Framework - Medical Necessity - Peer review

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment (*Kingsbrook Jewish Medical Center v. Allstate Ins. Co.*, 61 A.D.3d 13 [2d Dept. 2009]), such as by a qualified expert performing an independent medical examination or conducting a peer review of the injured person's

treatment. *See Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp.*, 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

To support a lack of medical necessity defense Respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." *See Provvedere, Inc. v. Republic W. Ins. Co.*, 42 Misc 3d 141(A), 2014 NY Slip Op 50219(U) (App. Term 2d, 11th and 13th Jud. Dists. 2014). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. *See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 13 Misc 3d 136(A), 2006 NY Slip Op 52116 (App Term 1st Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. *Amherst Med. Supply, LLC v. A. Cent. Ins. Co.*, 41 Misc 3d 133(A), 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity.

The civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet Respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. *See generally Nir v. Allstate Ins. Co.*, 7 Misc.3d 544, 547 (Civ. Ct. Kings Co. 2005). "Generally accepted practice is 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." *Id.*, at 547 (*citing City Wide Social Work & Psychological Servs. v. Travelers Indem. Co.*, 3 Misc. 3d 608, 612 [Civ. Ct., Kings County 2004]).

To meet the burden of persuasion regarding medical necessity - in the absence of factually contradictory records - the applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. *See generally, 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).

Peer Review - Jason S. Lipetz, M.D., dated June 18, 2020

Respondent relies upon the peer review report of Jason S. Lipetz, M.D., dated June 18, 2020, in asserting lack of medical necessity for the MRI of the left shoulder of the Assignor conducted on June 1, 2020. At the outset, the peer report lists the various medical records that Dr. Lipetz reviewed and provides a brief medical history of the accident and the treatment that the Assignor received. Dr. Lipetz opined that based on a review of the available records, the medical necessity had not been established for the MRI of the left shoulder performed by Applicant on June 1, 2020.

Dr. Lipetz noted that it appeared that multiple MRIs were concurrently requested. He found no history of more overt shoulder trauma in this case, no instability described by physical examinations, and no indication that surgical intervention was to be considered in this case. He noted that the records indicated that rehabilitation efforts and analgesics were to be utilized.

Citing medical authority, Dr. Lipetz asserted that:

> While MRI is one of the most sensitive diagnostic tests for detecting abnormalities of the extremities, findings may be misleading if not closely correlated with clinical history and examination findings. Primary indications for shoulder MRI imaging include the diagnosis, exclusion, and grading of rotator cuff abnormalities, labral lesions, glenohumeral pathology, cysts, and neoplasms. The appropriate use for MRI imaging of the shoulder is also reviewed in: **American College of Radiology. Shoulder Pain-Traumatic. 2017**. For evaluation of labral tears with normal radiographs either MRA, CT artitrography (CTA), or MRI without IV contrast can be used. For suspected rotator cuff tears with normal radiographs, MRI without IV contrast, or MRA are appropriate studies. Such studies can also be considered at a stage of injury and treatment when such data would more definitively guide further targeted interventions, Such criteria are not met in the current case.

I find that Respondent has adequately demonstrated a medical rationale and factual basis to support its defense that the MRI was not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. *See, Bronx Expert, supra*.

Peer Review - Robert A. Sohn, D.C., dated June 18, 2020

Respondent relies upon the peer review report of Robert A. Sohn, D.C., dated June 18, 2020, in asserting lack of medical necessity for the MRIs of the lumbar spine and cervical spine of the Assignor conducted on June 3, 2020. At the outset, the peer report lists the various medical records that Dr. Sohn reviewed and provides a brief medical history of the accident and the treatment that the Assignor received. Dr. Sohn opined that based on the documentation submitted for review, the initial examination report submitted by the treating chiropractor, the time frame in which the MRI scans had been prescribed and performed based solely from the initial examination report, that the MRI scans to both the cervical and lumbar spine were not a chiropractic/medical necessity.

Dr. Sohn noted that:

> The initial chiropractic evaluation had indicated there was neck and lower back pain and the pain was not radiating. There were physical examination findings to which the neurological assessment such as motor strength were equal and symmetrical to both upper and lower extremities, reflexes were equal and symmetrical, and sensation was present and intact. All mechanical provocative orthopedic tests including foraminal compression test, maximum compression test, straight leg raising test, and Kemp's test failed to produce evidence of any reproduction of radicular pain into any specific dermatomal pattern of the upper or

> lower extremities that would help differentiate between a suspected neuropathy, radiculopathy or disc pathology as compared to a reproduction of localized pain that would be consistent with a sprain/strain type of injury and subluxation.

Dr. Sohn explained that typically, most individuals who sustained sprain/strain type of injuries will often resolve 90% of the time within a period of four weeks especially with conservative treatment. He maintained that following injuries sustained from the motor vehicle accident that prior to a consultation or prescribing advanced diagnostic imaging procedures that a chiropractor must perform a comprehensive and detailed physical examination. Citing medical authority, he asserted that, "regarding MRI scans to the neck and back, where pain has many causes, but most patients can be diagnosed with a history, physical examination and plain film radiography. The majority of patients usually will improve with the course of conservative treatment. He further asserted that:

> MRI scans to the spine "should only be performed in the acute stages of care no less than four to six weeks following conservative treatment when there is suspected neurocompressive condition that would include loss of motor strength, reflex changes and dermatomal sensory change as well as loss of balance, gait problems and evidence of cervical myelopathy. MRI is not indicated for patients in whom the results would not alter the treatment. Advanced diagnostic studies such as the MRI scan may identify incidental pathology and result in an unnecessary referral to a subspecialist and possibly even unnecessary surgery. Careful consideration should be given when prescribing MRI scans because the results can lead to a more aggressive treatment when conservative management would be sufficient.

Dr. Sohn cited additional medical authority for his standard of "4 to 6 weeks of nonsurgical treatment." He also cited additional medical authority that stated that: "Clinicians should not routinely obtain imaging or other diagnostic test in patients with nonspecific lower back pain. Clinicians should perform diagnostic imaging and test for patients with lower back pain when severe or progressive neurological deficits are present or when serious underlying conditions are suspected on the basis of history and physical examination. Clinicians should evaluate patients with persistent lower back pain and signs or symptoms of radiculopathy or spinal stenosis with MRI or CT scan only if they are potential candidates for surgery or epidural steroid injections."

Other cited medical authority found that early MRI without indication does not improve outcomes and seems to have a strong iatrogenic effect in acute low back pain, regardless if the patient has acute radiculopathy.

Dr. Sohn indicated that there are specifications and conditions that must be met when prescribing an MRI scan to the areas of the cervical, thoracic or lumbar spine, and he found that the treating chiropractor had deviated from the clinical protocols as well as the definition of medical necessity in prescribing these MRIs. He then quoted a definition of medical necessity.

I find that Respondent has adequately demonstrated a medical rationale and factual basis to support its defense that the MRIs were not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. *See, Bronx Expert, supra*.

Analysis - Medical Necessity - MRIs - DOS 6/1/19-6/3/19

Applicant did not submit a formal rebuttal to address the June 18, 2020 peer report by Dr. Lipetz or the June 18, 2020 peer report by Dr. Sohn. To refute the peer reviews, Applicant relies principally upon the Assignor's medical records. At the hearing, Applicant's counsel initially argued that Respondent's lack of medical necessity defense is insufficient because Respondent did not submitted all of the underlying medical records reviewed by the doctors to the record. Applicant's submission contains a demand for all documents reviewed by Dr. Sohn (but not Dr. Lipetz), dated September 1, 2021, specifically seeking the initial evaluation report by the referring chiropractor, Dr. Mostovoy, dated March 6, 2020. With respect to the peer report by Dr. Lipetz, Applicant pointed to the initial examination report, dated March 3, 2020 by Dr. Jacobi, the referring physician.

With respect to the document disclosure issue, I note I dealt with a similar issue in *Hackensack Radiology Center and Allstate Insurance Company*, AAA Case No. 17-18-1097-4198 (May 26, 2019), in addressing an IME report that was the basis for the respondent's medical necessity defense. I stated, in pertinent part, that:

> I first note that Applicant selected the arbitration venue to present its claim and therefore, it must accept the consequences of such decision, including the limitations of the forum with respect to discovery. Under the No-Fault regulations, there is little allowance for written discovery once an arbitration is commenced. The no-fault regulations, including the "rocket docket" provision of 11 NYCRR Section 65-4.2(b)(3)(iii), generally contemplates a single written submission by Applicant containing "all documents supporting the applicant's position" and a single responding written submission by Respondent containing "all documents supporting its position on the disputed matter" after which the written record shall be closed. See 11 NYCRR Section 65-4.2(b)(3). Thereafter, the addition of any additional written documentation to the record is solely within the discretion of the arbitrator. See 11 NYCRR 65-4.2(b)(3)(iv). Thus, the arbitration process itself limits the need for any written discovery once an arbitration is commenced.
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> To the extent that Applicant believed that it required certain documentation to support its position, it could have sought pre-action/arbitration disclosure pursuant to CPLR 3102 (c). That, however, was apparently not done in this case. While "[an] arbitrator or an attorney of record in [an] arbitration may subpoena witnesses or documents upon the arbitrator's own initiative or upon the request of any party, when the issues to be resolved require such witnesses or documents," [see 11 NYCRR 65-4.5(o)(2)], I note that no subpoena was ever presented to me for consideration herein. Finally, to the extent that Applicant relies on *Wagman v Bradshaw*, 292 A.D.2d 84, 739 N.Y.S.2d 421 (2d Dept. 2002), or other related cases, to support preclusion, a negative inference or other sanction with respect to the IME report, I note that a review of the record appears to show that all the

> underlying medical records reviewed by the IME doctor were uploaded to the ADR Center. Moreover, I note that the rules of evidence in the arbitration forum are relaxed [*see* 11 NYCRR 65-4.5(o)(1)] and the evidence must be viewed in its totality. Any failure by Respondent to exchange documents reviewed by its expert, at best, goes to the credibility and weight of the expert's opinion.

A similar issue was also addressed in a well-reasoned decision by Arbitrator Pascariu, *Orthopro Services, Inc. and Geico Insurance Company*, AAA Case No.: 17-14-1003-6513 (January 18, 2016), where she stated, in pertinent part, that:

> A legislative objective in enacting the No-Fault Law was to reduce significantly the burden of automobile personal injury litigation on the courts (Memorandum of State Executive Department, 1977 McKinney's Session Laws of N.Y., at 2445, 2448; Governor's Message of Approval of L.1977, ch. 892, id., at 2534, 2535). . . . Moreover, the clear thrust of [Insurance Law] section 5106 is to provide no-fault claimants with an opportunity for immediate redress, and by arbitration to offer a mechanism where disputes over reimbursable expenses can be resolved more swiftly and economically than is generally possible in plenary suits." Roggio v. Nationwide Mutual Insurance Co., 66 N.Y.2d 260, 264, 496 N.Y.S.2d 404, 406 (1985).
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> Once arbitration gets underway, its conduct is not governed by the substantive or evidentiary rules which commonly prevail in courts of law; rather, the constraints on the arbitral authority are those measured by the bounds of rationality. Matter of Board of Education of Norwood-Norfolk Central School District v. Hess, 49 N.Y.2d 145, 145, 152, 424 N.Y.S.2d 389, 391 (1979). The availability of disclosure devices is a significant differentiating factor between judicial and arbitration proceedings; it is contemplated that disclosure devices will be sparingly used in arbitration. DeSapio v. Kohlmeyer, 35 N.Y.2d 402, 406, 362 N.Y.S.2d 843, 847 (1974). Arbitrators do not have the power to direct that parties engage in disclosure proceedings, and only under exceptional circumstances will a court order disclosure in arbitration. Kahn v. New York Times Co., 122 A.D.2d 655, 663, 503 N.Y.S.2d 561, 566 (1st Dept. 1986). Where a dispute has been submitted to arbitration, a party may obtain disclosure only by court order. State Farm Mut. Auto Ins. Co. v. Wernick, 90 A.D.2d 519, 455 N.Y.S.2d 30 (2d Dept. 1982).
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> Neither the No-Fault regulations promulgated by the Superintendent of Insurance nor the rules of the American Arbitration Association provide for disclosure and inspection akin to that in an action at law. If individual arbitrations were to become mired with disclosure disputes their resolution would be immeasurably delayed. Months of delay, in which the parties would be arguing back and forth over whether something should be disclosed, would ensue. This would run contrary to the intent behind the prompt resolution of No-Fault disputes. This does not mean, however, that a claimant seeking a copy of a medical record relied upon in a peer review is without recourse. A claimant seeking such document could make a formal request to the assigned arbitrator, through the American Arbitration Association, for the issuance of a subpoena to the respondent to compel him to provide a copy. 11 NYCRR 65-4.4(e). Notably, Applicant herein did not do so. A claimant could also attempt to procure a copy directly from the provider. Neither

did Applicant avail itself of the opportunity provided by CPLR 3102(c) to compel disclosure in arbitration.

Applicant cited Wagman v. Bradshaw, 292 A.D.2d 84, 739 N.Y.S.2d 421 (2d Dept. 2002), in support of its position that Respondent should be precluded from relying on peer reviews citing to an evaluation, a copy of which was not provided. I disagree. Wagman involved an issue of hearsay evidence. The question presented was whether a treating chiropractor would be permitted to testify as to the contents of an inadmissible written report -- for which there was no proof of reliability -- interpreting MRI films, themselves not admitted into evidence, generated by a radiologist who did not testify.

The rationale of the holding that the chiropractor could not so testify was that the radiologist who prepared the report was not available to be cross-examined. In arbitration, however, discovery is limited and the rules of evidence do not apply. 11 NYCRR 65-4.4(e) specifically provides that the arbitrator shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. In fact, No-Fault arbitrations almost always rest upon hearsay evidence, i.e., the written medical exam reports submitted by claimant health care providers and the written peer reviews and IME reports prepared by doctors retained by the insurers. If I were to hold that a peer review is precluded because it cites to an article not provided to the claimant, the public policy guiding No-Fault arbitration -- swift resolution of compensation disputes -- would be seriously undermined. Not only would arbitration become bogged down in arguments over discovery, but doctors would have to appear at arbitrations to testify in person instead of submitting written reports.

I note that Arbitrators have ruled that disclosure of documents relied upon by peer reviewers is not mandatory in No-Fault arbitration. See Eastern Long Island Hospital v. v. Allstate Ins. Co., AAA Case No. 412012095264 (Tali Philipson, Dec. 2, 2012). In the latter case, Master Arbitrator Levy stated, "Applying civil practice procedures governing trials and discovery to the no-fault arbitration process undermines the purpose of alternative dispute resolution." He vacated the award "because the preclusion determination is arbitrary, without a rational basis and an abuse of discretion." See also Long Island Diagnostic Imaging a/a/o GL v. Allstate Ins. Co., AAA Case No. 17R-991-03332-08 (Harris Levy, May 9, 2008). In the latter case, Master Arbitrator Levy stated, "Applying civil practice procedures governing trials and discovery to the no-fault arbitration process undermines the purpose of alternative dispute resolution." He vacated the award "because the preclusion determination is arbitrary, without a rational basis and an abuse of discretion."

Accordingly, although Respondent did not provide Applicant with a copy of the evaluation relied upon by Dr. Amidror's peer review, I do not preclude it.

I the reasoning in these prior awards to be persuasive to the issues herein. Though Applicant made a document demand with respect to some of the records herein, I note that no formal subpoena was ever presented to me for consideration herein. *See* 11 NYCRR 65-4.4(e); 11 NYCRR 65-4.5(o)(2). While I certainly would have considered a

timely presented subpoena, I note that Respondent's defense herein has been clear at least since November of 2020, and there is little in the record to indicate that Applicant took any action to obtain the supporting documents from Respondent, the treating/referring practitioners or any other source, prior to its partial demand for records in September 2021. Moreover, as similarly noted in my prior award, it was Applicant who selected the arbitration venue to present its claim and therefore, it must accept the consequences of such decision, including the limitations of the forum with respect to discovery. On the record presented, I find no basis for precluding either peer review.

After reviewing all of the submissions and taking into account the oral arguments of the parties, I find that Applicant failed to establish, by a preponderance of credible evidence, that the MRI of the left shoulder of the Assignor conducted on June 1, 2020, was medically necessary. Applicant did not submit any rebuttal to the peer review, and I find that the medical records alone fail to meaningfully and adequately address the arguments and issues advanced in Dr. Lipetz's peer review and establish the medical necessity of the MRI. The MRI was recommended by Dr. Jacobi following his initial examination of the Assignor on March 3, 2020, one day after the accident, and formally referred to Applicant on March 9, 2020. The MRI, however, was not conducted until nearly three months later on June 1, 2020. By submitting the March 9, 2020 referral by Dr. Jacobi, Applicant in effect conceded that the March 3, 2020 initial examination by Dr. Jacobi was the basis for the MRI referral herein. The initial report does not specifically explain the need or rationale for the prescribed imaging at the time ordered. There were no apparent "red flags" and no indication that more aggressive treatment (e.g. surgery, epidural or other injection, etc.) was needed, or was even being contemplated, at that time. There was also no documentation on how the test results might otherwise alter the treatment plan. In fact, the three month delay in actually conducting the MRI undermines **any** assertion the MRI was urgently needed without undergoing a reasonable course of conservative care. There was also no explanation of the delay in the medical records submitted. The peer review was essentially unrebutted. Ultimately, I find the peer review to be more credible and persuasive than Applicant's supporting medical records and oral arguments. Based on the totality of the evidence in the record, Applicant has failed to rebut Respondent's defense and establish the medical necessity for the MRI at issue. As Applicant has failed to meet its burden of persuasion, Applicant's claims for reimbursement for the MRI of the left shoulder of the Assignor conducted on June 1, 2020 are denied.

I also find that Applicant failed to establish, by a preponderance of credible evidence, that the MRIs of the lumbar spine and cervical spine conducted on June 3, 2020, were medically necessary. Applicant did not submit any rebuttal to the peer review, and I find that the medical records alone fail to meaningfully and adequately address the arguments and issues advanced in Dr. Trimboli's peer review and establish the medical necessity of the MRIs. The MRIs were recommended by Dr. Mostovoy, D.C., on March 6, 2020, four days after the accident, and were conducted nearly three months later. While it may have been preferable if the initial report was uploaded to the record, Dr. Sohn did provide the findings from the initial examination and indicate that the history, subjective complaints and physical exam findings on the initial examination were consistent with a sprain/strain type of injury and subluxation, to which the standard of care would generally require four to six weeks of conservative care prior to the ordering

of any MRIs. There were no apparent "red flags" in the medical records uploaded to the record, and no indication that more aggressive treatment (e.g. surgery, epidural or other injection, etc.) was needed, or was even being contemplated, at that time. Moreover, the three month delay in actually conducting the MRIs undermines **any** assertion that the MRI was urgently needed without undergoing a reasonable course of conservative care (which again was the standard of care set forth by the peer reviewer). There was also no explanation of the delay in the medical records submitted. Ultimately, I find the peer review to be more credible and persuasive than Applicant's supporting medical records and oral arguments. Based on the totality of the evidence in the record, Applicant has failed to rebut Respondent's defense and establish the medical necessity for the MRIs at issue. As Applicant has failed to meet its burden of persuasion, Applicant's claims for reimbursement for the MRIs of the lumbar spine and cervical spine of the Assignor conducted on June 3, 2020, are denied.

Conclusion

For the reasons set forth above, Applicant's claim is denied in its entirety. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

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

12/18/2021
(Dated)

Kihyun Kim

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:
a59a51e80cdede2badd34b65b06ac302

Electronically Signed

Your name: Kihyun Kim
Signed on: 12/18/2021