American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Citimedical Services P.C. (Applicant)	AAA Case No.	17-21-1192-1043
	Applicant's File No.	21-000473
- and -	Insurer's Claim File No.	200855-08
	NAIC No.	36030
Maya Assurance Company (Respondent)		

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 05/18/2022
   Declared closed by the arbitrator on 05/26/2022

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

   Bryan Visnius, Esq. from De Martini & Yi, LLP participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$1,970.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant reduced the total amount in dispute to $1,728.95 pursuant to fee schedule (reducing the amount sought for the 10/28/20 cervical spine MRI to $725.76).

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

3. Summary of Issues in Dispute

   The claimant was a 22 year-old female rear seat passenger of a motor vehicle that was involved in an accident on 9/24/20. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is the medical necessity of a

10/28/20 cervical spine MRI and a 10/28/20 lumbar spine MRI that Respondent timely denied reimbursement for based on a 12/14/20 peer review by Stuart Stauber, M.D.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was a 22 year-old female rear seat passenger of a motor vehicle that was involved in an accident on 9/24/20. The claimant reportedly injured her neck, bilateral shoulders, bilateral arms, mid back, and low back. There was no reported loss of consciousness. There were no reported lacerations or fractures. There was no reported emergency treatment sought or received. On 9/25/20 claimant presented to Jamaica Hospital where she was evaluated, treated, and released. On 9/28/20 the claimant presented to NY Balance Acupuncture, P.C. with a full wiry and floating pulse. No tongue examination was documented. The claimant was initiated on acupuncture. On 9/28/20 the claimant presented to Advance Physical Therapy and was initiated on physical therapy. On 9/29/20 the claimant presented to Mill Neck Chiropractic and was initiated on chiropractic treatment. On 10/1/20 the claimant presented to Gamil Kostandy, M.D. of New Era Medical, P.C. with complaints of headaches, non-radiating neck pain, and non-radiating low back pain. Cervical examination revealed tenderness and reduced range of motion (unquantified). Lumbar examination revealed tenderness and reduced range of motion (unquantified). Straight leg raise was positive at 70° bilaterally. Deep tendon reflexes, muscle strength and sensation were normal. The claimant was prescribed physical therapy, medications (Naproxen 550mg x60 and Lidocaine 5% ointment x200gm) and MRIs (cervical spine, lumbar spine, and brain). The 10/28/20 cervical spine MRI interpreted by Stephen Toder, M.D. of Citimedical Services, P.C. (Applicant) produced an impression of cervical spasm with no fracture or focal bony lesion, small central herniation of the nucleus pulposus at the C5/6 level with impingement of nerve roots centrally, and normal appearance of the cervical cord. The 10/28/20 lumbar spine MRI interpreted by Stephen Toder, M.D. of Applicant's office produced an impression of mild levoscoliosis with intact lumbar spine without fracture or focal bony lesion, mild bulging of the annulus fibrosis of the L4/5 and L5/S1 discs, and normal conus medullaris. At issue are the 10/28/20 cervical spine MRI and the 10/28/20 lumbar spine MRI.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order 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 Western Ins. Co.*, 2014 NY Slip Op. 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. 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.*, 2006 NY Slip Op. 52116 (App. Term 1st Dept. 2006). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/peer doctor with his own facts. *Park Slope Medical and Surgical Supply, Inc. v. Travelers*, 37 Misc.3d 19 (2012).

Respondent timely denied the imaging studies at issue based on the 12/14/20 peer review by Stuart Stauber, M.D. After reviewing the claimant's history, treatment, and medical records, Dr. Stauber opines "in this case, the claimant sustained soft tissue strain/sprain/contusion injuries. In this case, the claimant was involved in a motor vehicle accident while a passenger. The standard of care for these types of injuries would be evaluation by a physician, prescribing of medications such as anti-inflammatory medications, rest and/or conservative physiotherapy for a period of 6-8 weeks with follow-up." Dr. Stauber continues "based on the review of records, I find that MRI of the cervical spine was unnecessary. That is, according to one article pertaining to the lumbar spine, but also to the cervical spine, (American Family Physician, March 15, 2000 - Diagnosis and Management of Acute Low Back Pain) it is noted that, "Radiographs and laboratory tests are generally unnecessary, except in the few patients in whom a serious cause is suspected based upon a comprehensive history and physical examination. Serious causes that need to be considered include infection, malignancy, rheumatological diseases and neurological disorders." It is further noted that, "MRI or CT studies should be considered in patients with worsening neurological deficits or a suspected systemic cause of back pain such as infection or neoplasm. These imaging studies may also be appropriate when referral for surgery is possible. In yet another article, the same conclusion is reiterated, in that it is noted that MRI of the cervical spine should only be used only to evaluate for "red flag" diagnoses, including "fracture or neurological deficit associated with acute trauma, tumor or infection." (National Guideline Clearinghouse: Neck and Upper Back Complaints. United States Department of Health and Human Services. P. 1-11). Again, the above clinical scenarios were not present in this case. Therefore, for the reasons noted above, I find that the cervical MRI was not medically necessary in this case." Dr. Stauber asserts "based on the review of records, I find MRI of the lumbar spine to be unnecessary. I say this because there are only certain circumstances in which MRI scans of the spine would be necessary. That is, according to one article (i.e. "Current Concepts Review - The Use of Radiographic Imaging Studies in the Evaluation of Patients Who Have Degenerative Disorders of the Lumbar Spine - Journal of Bone and Joint Surgery, 1996; 78:114-125) - it is noted that, "The prognosis for patients who have acute low-back pain that is treated non- operatively is so favorable that imaging studies are rarely needed. It is further noted in the same article that, "only rarely is the early management of patients who have low-back pain changed because of the results of magnetic resonance imaging scans, provided that infection, tumor and fracture have been ruled out. Furthermore, there is a high prevalence of age-related abnormal findings that are unrelated to the etiology of the

pain; these findings may create a picture of spinal deterioration that needs repair and the perception of a damaged self. These perceptions are not helpful for the psychological state of a patient who has low-back pain." In another article, (American Family Physician, March 15, 2000 - Diagnosis and Management of Acute Low Back Pain) it is noted that, "Radiographs and laboratory tests are generally unnecessary, except in the few patients in whom a serious cause is suspected based upon a comprehensive history and physical examination. Serious causes that need to be considered include infection, malignancy, rheumatological diseases and neurological disorders." It is further noted that, "MRI or CT studies should be considered in patients with worsening neurological deficits or a suspected systemic cause of back pain such as infection or neoplasm. These imaging studies may also be appropriate when referral for surgery is possible."

Where the Defendant insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Plaintiff which must then present its own evidence of medical necessity (see Prince on Evidence section 3-104, 3-202). *West Tremont Medical Diagnostic PC v. Geico*, 13 Misc.3d 131, 824 N.Y.S. 2d 759.

Applicant submitted a 4/8/22 peer rebuttal by Regina Moshe, M.D. It is noted that this rebuttal includes the use of tables that are incompatible with the narrative format of this award. These tables were carefully reviewed, but will not be recited here. After reviewing the claimant's history, treatment, and medical records, Dr. Moshe asserts "Dr. Stauber has failed to take into consideration the fact that this patient was a 22-year-old female who had been subjected to severe trauma in the subject MVA wherein she was the back-seat passenger of a vehicle that was hit from the rear-end. She had symptoms at multiple areas- neck and low back, shoulder." Dr. Moshe opines "very clearly this patient was not in a position to perform much less benefit from further therapy at this stage. Therefore, rather than allow the patient to continue with therapy which would not only subject her to more pain but might also cause further damage, the MRIs were ordered so as to have a pin pointed diagnosis and a targeted treatment plan. Moreover, the above discussion clearly indicate that the patient had neurological issues. Furthermore, the ACR guidelines do not indicate that MRI should only be performed if there are neurological deficits; rather, it indicates that MRI testing can be performed in cases of known or suspected soft tissue injuries, such as ligament tears, epidural hematoma and spinal cord edema or hematoma, but more especially in the presence of red flags or neurological deficit or when surgery is necessary." Dr. Moshe continues "this patient was recommended MRIs in order to correlate findings with the clinical presentation. Combined analysis of the imaging and clinical findings provides a more accurate and concise approach to the patient's pain. MRI diagnostic testing in this case was necessary to establish the origin of pain, specifically to determine if the pain is a result of damage to intervertebral discs or other diseases of the spine; determine the level of the intervertebral disc damage and correlation with radicular symptoms and to determine the extent of the damage to the "soft" tissues such as ligaments and muscles and assess prognosis for the future disability. The American College of Radiology (ACR) guidelines clearly mention "acute trauma" to be one of the indicators for the MRI testing. The patient's history of significant trauma was indicative of the need for the MRI testing. The American College of Radiology (ACR-ASNR-SCBT-MR-SSR) PRACTICE PARAMETER for the performance of magnetic resonance imaging (MRI) of the adult spine indicates-"...G. Trauma [3,23-32] MR imaging is a valuable tool for

assessing patients with known vertebral injury. In addition to assessing the fractures and their extent and acuity, it can aid in evaluating the integrity of ligaments, which are critical to spinal stability. It also contributes to imaging the spinal cord for transection, contusion, edema, and hematoma. Cord compression by bone fragments, disc herniation, and epidural or subdural hematomas can also be demonstrated. Serial examination of patients with hemorrhagic contusion within the cord can reveal the onset of posttraumatic progressive myelopathy. MR imaging is also useful in patients with equivocal findings on CT examinations by searching for evidence of occult injury (edema, ligament injury). In instances of cervical trauma, MR imaging and MR angiography (MRA) can _ provide information about the vertebral and carotid arteries..."
https://www.acr.Org/-/media/ACR/Files/Practice-Parameters/MR-Adult-Spine.pdf Thus, the ACR guidelines do indicate that MRIs were appropriate following the spinal trauma. The MRIs would help to rule out any serious cause for the patient's symptoms and once that is ruled out, then the treatment can be limited to physical therapy and bed rest. The MRIs were necessary in order to correlate symptoms with any abnormalities before a treatment plan was drawn up. Clearly the findings on the MRIs would not have been revealed merely upon a clinical exam and the results of the MRIs would certainly influence the future treatment plan for this patient." Dr. Moshe concludes "magnetic resonance imaging (MRI) is a medical imaging technique used in radiology to form pictures of the anatomy and the physiological processes of the body. MRI scanners use strong magnetic fields, magnetic field gradients, and radio waves to generate images of the organs in the body. MRI does not involve X-rays or the use of ionizing radiation, which distinguishes it from CT and PET scans. MRI is a medical application of nuclear magnetic resonance (NMR). NMR can also be used for imaging in other NMR applications, such as NMR spectroscopy. While the hazards of ionizing radiation are now well controlled in most medical contexts, an MRI may still be seen as a better choice than a CT scan. MRI is widely used in hospitals and clinics for medical diagnosis and staging and follow-up of disease without exposing the body to radiation. An MRI may yield different information compared with CT. Risks and discomfort may be associated with MRI scans. Compared with CT scans, MRI scans typically take longer and are louder, and they usually need the subject to enter a narrow, confining tube. In addition, people with some medical implants or other non-removable metal inside the body may be unable to undergo an MRI examination safely. MRI was originally called NMRI (nuclear magnetic resonance imaging), but "nuclear" was dropped to avoid negative associations. Certain atomic nuclei are able to absorb radio frequency energy when placed in an external magnetic field; the resultant evolving spin polarization can induce an RF signal in a radio frequency coil and thereby be detected. In clinical and research MRI, hydrogen atoms are most often used to generate a macroscopic polarization that is detected by antennas close to the subject being examined. Hydrogen atoms are naturally abundant in humans and other biological organisms, particularly in water and fat. For this reason, most MRI scans essentially map the location of water and fat in the body. Pulses of radio waves excite the nuclear spin energy transition, and magnetic field gradients localize the polarization in space. By varying the parameters of the pulse sequence, different contrasts may be generated between tissues based on the relaxation properties of the hydrogen atoms therein. Since its development in the 1970s and 1980s, MRI has proven to be a versatile imaging technique. While MRI is most prominently used in diagnostic medicine and biomedical research, it also may be used to

form images of non-living objects. MRI scans are capable of producing a variety of chemical and physical data, in addition to detailed spatial images. The sustained increase in demand for MRI within health systems has led to concerns about cost effectiveness and over diagnosis. Based on the foregoing, it is clear that MRIs should be done sufficiently early to enable accurate diagnosis and prognosis. Avoiding diagnostic delays will prevent development of irreversible damage and loss of function in muscle and nerves requiring interventional or surgical treatment. There are no specific guidelines delineating the absolute structured path for treatment to be universally prescribed to all patients. Great deference should be given to the treating provider charged with the responsibility to examine, diagnose and treat a patient who presents with symptoms and positive clinical findings. Based upon a review of the aforementioned documents, taking into consideration the patient's the history of the injury, the patient's complaints, and the clinical findings and in accordance with the generally accepted standards of care in the relevant medical community, MRI testing of cervical spine and lumbar spine were medically necessary and should not be denied."

Here Dr. Stauber's essential argument is that the subject MRIs would be premature prior to "conservative physiotherapy for a period of 6-8 weeks with follow-up;" absent a "red flag" diagnoses, including "fracture or neurological deficit associated with acute trauma, tumor or infection." Dr. Moshe argues "very clearly this patient was not in a position to perform much less benefit from further therapy at this stage." This argument is unpersuasive as the claimant presented to physical therapy on 9/28/20 which was then initiated, two days prior to Dr. Kostandy's initial examination recommending physical therapy and the subject MRIs; therefore physical therapy was not dependent on the subject MRIs. Dr. Moshe argues against prematurity as "the ACR guidelines do indicate that MRIs were appropriate following the spinal trauma" and "MRI diagnostic testing in this case was necessary to establish the origin of pain, specifically to determine if the pain is a result of damage to intervertebral discs or other diseases of the spine." These arguments are too broad and not particularly claimant specific. If these arguments were fully accepted then every patient involved in a motor vehicle accident could routinely be prescribed MRIs of every body part complained of at the initial examination, not withstanding actual medical necessity. Accordingly, the claim is denied in its entirety.

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

06/17/2022
(Dated)

Charles Blattberg

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:
47644ea666ec48b42c4a043eaaff5132

Electronically Signed

Your name: Charles Blattberg
Signed on: 06/17/2022