American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sedation Vacation Perioperative Medicine PLLC (Applicant)	AAA Case No.	17-21-1227-0653
	Applicant's File No.	NF369127
	Insurer's Claim File No.	0585043270101046
- and -	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Glen Wiener, 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 07/12/2022
   Declared closed by the arbitrator on 07/12/2022

   Clifford Ryan, Esq. from Law Office of Thomas Tona P.C. participated for the Applicant

   Shaunte Francis, Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **$386.23**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The total amount requested was amended to $178.26 to reflect fee schedule reductions.

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

3. Summary of Issues in Dispute

   Assignor B.B. a 50-year-old female was injured in an automobile accident on May 20, 2021. She did not seek any immediate emergency medical attention. On June 21, 2021 complaining of radiating low back pain Assignor presented to Louis Macolino, D.C. and commenced treatment.

On August 2, 2021 a lumbar epidural steroid injection was administered to Assignor. Monitored anesthesia care (MAC) was provided by Applicant Sedation Vacation Perioperative Medicine PLLC. Respondent Geico Insurance Company denied Applicant's request for reimbursement based on a peer review conducted by Jeffry R. Beer, M.D. dated August 30, 2021.

The sole question presented is whether Respondent's unopposed peer review established the general anesthesia was not medically necessary?

4. Findings, Conclusions, and Basis Therefor

The decision below is based on the documents on file in the Electronic Case Folder maintained by the American Arbitration Association as of the date of this hearing and on oral arguments of the parties. No witness testimony was produced at the hearing.

Applicant Sedation Vacation Perioperative Medicine PLLC. as assignee of B.B. seeks $178.26 reimbursement, with interest and counsel fees, under the No-Fault Regulations, for anesthesia services provided to Assignor.

Respondent Geico Insurance Company insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., Respondent was obligated to reimburse the injured party (or her assignee) for all reasonable and necessary medical expenses arising from the use or operation of the insured vehicle.

Assignor B.B. a 50-year-old female was injured in an automobile accident on May 20, 2021. She did not seek any immediate emergency medical attention. On June 21, 2021 complaining of radiating low back pain Assignor presented to Louis Macolino, D.C. and commenced treatment. On June 23, complaining of radiating low back and knee pains Assignor presented to Ravi Salickram, RPA-C at Billy H. Ford MD, PC and was referred for imaging and physical therapy.

On August 2, 2021 Dr. Ford administered a lumbar epidural steroid injection to Assignor. Monitored anesthesia care (MAC) was provided by Applicant. Respondent denied Applicant's request for reimbursement for the MAC based on a peer review conducted by Jeffry R. Beer, M.D. dated August 30, 2021.

The sole question presented is whether Respondent's unopposed peer review established the general anesthesia was not medically necessary?

Applicant established a prima facie entitlement to benefits by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim, using the statutory billing form, was mailed to and received by Respondent. *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co*., 25 N.Y.3d 498, 501, 14 N.Y.S.3d 283 (2015). The proof that Applicant mailed the claim form to Respondent is embodied in the latter's denial, which references receipt of the proof of claim. *See Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co*., 9 Misc.3d 97, 804 N.Y.S. 2d 532 (App. Term 9th and 10th Jud. Dist. 2005).

Once Applicant established a prima facie case the burden shifted to Respondent to prove the anesthesia services in question were not medically necessary. *See Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.,* 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dept. 2005); *A.B. Medical Services, PLLC v. Geico Ins. Co.,* 2 Misc.3d 26, 773 N.Y.S.2d 773 (App. Term 2d & 11th Jud. Dist. 2003). Lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Company,* 5 Misc.3d 975, 787 N.Y.S. 645 (Civ. Ct. N.Y. Co. 2004).

"A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards. For example, the medical rationale may be insufficient if not supported by evidence of the generally accepted medical professional practice." *Jacob Nir, M.D. v. Allstate Ins. Co*., 7 Misc.3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005).

"Generally accepted practice is that range of practice that the professional will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *Citywide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co.,* 3 Misc.3d 608, 777 N.Y.S.2d 241 (Civ. Ct. NY Co. 2004). This is the standard that will be applied herein.

In opining the general anesthesia was not medically necessary Dr. Beer stated:

> *The injection procedure offered in this case typically does not require the use of sedation and can be safely performed with local anesthetic alone.*
>
> *Patients must remain awake to be able to warn of adverse events. Sedation should be reserved for genuine and unique cases in which it is indicated for patients' co-morbid conditions.*
>
> *It is therefore concluded that such injections can be performed safely on an outpatient basis and without the need for sedation or special monitoring.*

The above quoted statements set forth a sufficient factual basis and medical rationale for the opinion the anesthesia services were not medically necessary and therefore established *prima facie* the services billed for were not medically necessary. *See Delta Diagnostic Radiology, PC v. Progressive Casualty Ins. Co.,* 21 Misc.3d 142A, (App. Term 2d and 11th Dist. 2008); *Crossbridge Diagnostic Radiology, PC v. Progressive Casualty Ins. Co.,* 20 Misc.3d 143A (App. Term 2d & 11th Dist. 2008).

Once Respondent established a factual basis and medical rationale for denying the claim, the burden shifted to Applicant to present evidence it complied with the standard or the peer reviewer's standard is erroneous.

Applicant did not submit a peer rebuttal disputing the standard and conclusion of the peer reviewer that monitored general anesthesia is not normally used during the administration of a lumbar epidural steroid injection.

Respondent's position is unchallenged as Applicant did not submit any evidence that meaningfully referred to or discussed the determination of Respondent's expert. *See Pan Chiropractic P.C. v. Mercury Ins. Co.,* 24 Misc.3d 136A (App. Term 2d, 11th & 13th Dist. 2009). *See also Favorite Health Products Inc. v. Geico Ins. Co.,* 26 Misc.3d 145 A (App. Term 2d Dept 2010), *Complete Orthopedic Supplies, Inc. v. State Farm Mut. Auto. Ins. Co.,* 23 Misc.3d 5 (App. Term 2d Dept 2009).

It is ultimately Applicant who must prove, by a preponderance of the evidence, that the services in question were medically necessary. *Dayan v. Allstate Ins. Co,* 39 Misc.3d 151(A) (App. Term 2d, 11th & 13th Dists. 2015); *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co*., 37 Misc.3d 19, 952 N.Y.S.2d 372. (App. Term 2d, 11th & 13th Dists. 2012) This was not done herein.

Accordingly, Applicant's request for reimbursement is denied based on the un-rebutted conclusions of the peer reviewer and Respondent's denial is sustained. This award is in full disposition of all No-Fault benefit claims submitted to this arbitrator.

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 New York

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

07/13/2022
(Dated)

Glen Wiener

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:
e5ad18c90e8edbdb20eb1dc3d5c1dcc8

Electronically Signed

Your name: Glen Wiener
Signed on: 07/13/2022