American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Karin Gepp, PH.D (Applicant)	AAA Case No.	17-21-1202-0155
	Applicant's File No.	AF21-121309
- and -	Insurer's Claim File No.	0606607935
	NAIC No.	19232
Allstate Insurance Company (Respondent)		

ARBITRATION AWARD

I, Richard Kokel, 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: EIP

1. Hearing(s) held on 06/24/2022
   Declared closed by the arbitrator on 06/24/2022

   Bassam Dola from Abrams Fensterman, LLP participated for the Applicant

   Linda Smith from Law Offices of John Trop participated for the Respondent

2. The amount claimed in the Arbitration Request, **$1,820.66**, 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

   The issue is whether psychological testing is medically necessary. The Respondent, based on a peer review prepared by Dr. Rosenfeld, Psy.D., determined that the services were not necessary.

4. Findings, Conclusions, and Basis Therefor

   The EIP, a 25-year-old male bicyclist, was involved in a motor vehicle accident on October 31, 2020. Therein he suffered personal injuries and the Applicant rendered

psychological health care services to help treat him. The services were rendered on January 14, 2020, and they consisted of the following: psychological diagnostic evaluation (CPT code number 90791); neurobehavioral status exam (CPT code number 96116); neuropsychological testing (CPT code number 96118); and, psychological testing (CPT code number 96101).

The Respondent timely denied the claim. They paid for the diagnostic evaluation and denied reimbursement for the remaining services. The grounds were based on a lack of medical necessity, which was supported by a peer review prepared by Dr. Rosenfeld, Psy.D. (he stated that the diagnostic evaluation was necessary).

The below noted decision is based upon my review of the submitted evidence and the oral argument of the representatives present at the hearing. All submitted evidence is contained within Case Management system (Modria) maintained by the American Arbitration Association.

The Applicant's prima facie entitlement to recover No-Fault benefits for the services at issue was not challenged. The only issue for determination concerns the Respondent's above noted defense and as to that the Respondent bears the burden of proof (see Amaze Med. Supply v Eagle Ins. Co., 2 Misc. 3rd128 [A] (2003).

Dr. Rosenfeld first reiterated the EIP's history, post-accident, along with his (the EIP's) treatment. He noted that the EIP was treated and discharged from St. Barnabas Hospital immediately after the accident. The EIP, as per the reviewed records, reveal that the EIP did not report head trauma or loss of consciousness. Dr. Rosenfeld stated that the EIP was initially seen by Dr. Karin Gepp on January 14, 2021, and that the evaluation led to an impression of posttraumatic stress disorder (acute) and a recommendation for supportive psychotherapy. The standard of care was then identified, to wit, that a diagnostic interview alone is the main tool to determine a diagnosis and treatment plan (the elements of a diagnostic interview were delineated). Therefore, Dr. Rosenfeld concluded that the neurobehavioral/neuropsychological/psychological testing was not medically necessary because the diagnostic interview, alone, identified a diagnosis and treatment plan and that to perform the other services under the circumstances presented would be a deviation from the standard of care. He added that psychological testing can be useful under certain, complex, circumstances to augment the initial interview, but that the EIP's situation was straightforward in that the EIP developed psychological symptoms in response to the motor vehicle accident (the stressor). It was also pointed out the other services consisted of the EIP completing symptom checklists, and that any information set forth would have been readily available during the clinical interview, i.e., it was redundant.

A peer review should set forth a factual basis and a medical rationale for the view that a medical service was not necessary (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 2003]; *S & M Supply v Kemper Auto & Home Ins. Co.*, 2 Misc 3d 134[A], 2004 NY Slip Op 50209[U] [App Term, 2d & 11th Jud Dists 2004]). Herein, Dr. Rosenfeld provided a sound medical rationale to support his conclusion.

Under such circumstances, the burden of proof shifts to Applicant to prove medical necessity by a preponderance of the credible evidence (see Yklik, Inc. v GEICO Ins. Co., 2010 NY Slip Op 51336(U) [28 Misc 3d 133(A)] App. Term 2d Dept. (2010).

The Applicant submitted 'Rebuttal Report' that was prepared by Karin Gepp, PH.D. This document reiterated the EIP's diagnosis and treatment plan (as noted above) and it described, generally, what and when testing can be beneficial. Dr. Gepp did not credibly comment on the diagnostic interview being sufficient to diagnose and treat the within EIP. His comments regarding the need for the testing were general, and not applied to the within EIP's condition. The rebuttal focused on the EIP's statements that his physical pain interferes with his daily activities. This document also focuses on traumatic brain injury and symptoms caused by such an injury, but this is not related to the EIP's condition. A review of the evidentiary record does not disclose any indication that the EIP suffered a traumatic brain injury in the accident.

Based on the foregoing, the Respondent proved that the testing services at issue were not medically necessary. The claim is thereby 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 New York

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

07/23/2022
(Dated)

Richard Kokel

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:
9b9e93289b4a9123bc77141ca3a9f0b8

Electronically Signed

Your name: Richard Kokel
Signed on: 07/23/2022