American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PARS Medical PC (Applicant)	AAA Case No.	17-22-1246-2079
	Applicant's File No.	156241
- and -	Insurer's Claim File No.	0478712880003
	NAIC No.	36447
LM General Insurance Company (Respondent)		

ARBITRATION AWARD

I, Meryem Toksoy, 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 (SG)

1. Hearing(s) held on 09/07/2022
   Declared closed by the arbitrator on 09/07/2022

   Emilia Rutigliano, Esq. from Law Office of Emilia I. Rutigliano, P.C. participated in person for the Applicant

   Vanessa Hlinka, Esq. from Callinan & Smith LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$1,053.18**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Based on a fee schedule reduction, the amount in dispute was amended to $671.84.

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

3. Summary of Issues in Dispute

   In dispute is a claim by the Applicant, PARS Medical, PC, as the assignee of a 27-year-old male who was injured as a driver in a motor vehicle accident on 12-10-21.

Applicant seeks to be reimbursed **$671.84** for services that took place on 01-27-22. This consists of a lumbar **epidural steroid injection to the L4-L5 level of the spine. The claim also accounts for a Professional Component (PC) charge for epidurography.** These procedures were carried out by Isaac Kreizman, MD.

With regard to Applicant's claim, Respondent asserts the **defense of lack of medical necessity** and relies upon the **peer review** of Vijay Sidhwani, DO to sustain its denial.

In opposition, Applicant has submitted a rebuttal statement by Dr. Kreizman.

During the hearing, there was no argument presented with respect to Applicant's prima facie case or the timeliness and/or propriety of Respondent's denial.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives.

There were no witnesses.

LEGAL FRAMEWORK:

A presumption of medical necessity attaches to an applicant's properly-submitted claim form and upon its receipt, the burden shifts to the respondent to demonstrate lack of medical necessity. Amaze Med. Supply v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 NY Slip Op 51701(U)(App Term, 2nd Dept, 2nd and 11th Jud Dists., 2003).

To succeed on this defense, the insurer is required to "set forth with sufficient particularity the factual basis and medical rationale underlying that determination." Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 2006 NY Slip Op 51185(U)(App Term, 2nd Dept, 9th and 10th Jud Dists., 2006).

Further, defending a denial of first-party benefits on the ground that the billed-for services were not medically necessary requires the insurer to establish that the services were "inconsistent with generally accepted medical/professional practice[s]." CityWide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608 at 609, 777 N.Y.S.2d 241 Civ. Ct. Kings Co. 2004).

If the insurer can establish that the services were not medically necessary, "the burden shifts to the plaintiff which must then present its own evidence of medical necessity." West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 5187(U) (App Term, 2nd Dept, 2nd & 11th Jud Dists., 2006).

To prevail on this issue, the claimant must put forward evidence that meaningfully refers to and rebuts the conclusion(s) set forth in the peer review report. High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A), 2010 N.Y. Slip Op.50447(U)(App. Term, 2nd Dept, 2nd, 11th & 13th Jud. Dists, 2010).

DECISION:

The evidence leads me to conclude, as a matter of fact, that the services performed on 01-27-22 were medically necessary. The rebuttal statement by Isaac Kreizman, MD sets forth examination findings, and it explains the significance of those findings in relation to the claimed services. Furthermore, it cites to supporting literature and meaningfully addresses the arguments that were raised in Dr. Sidhwani's peer review. As such, I find that the more persuasive proof on the issue of medical necessity resides with the Applicant.

Accordingly, the claim is granted in the amount of $671.84, including statutory interest, attorney fees, and filing fees.

During the hearing, defense counsel argued that Respondent should be heard on another issue, namely fraudulent procurement of the policy. I explained that this defense must be preserved in a timely denial. Otherwise, it is precluded. Westchester Medical Center v. GMAC Ins. Co. Online, Inc., 80 A.D.3d 603, 915 N.Y.S.2d 115 (2d Dept. 2011); Healthy Way Acupuncture, P.C. v. USAA General Indemnity Co., 53 Misc.3d 128(A), 2016 N.Y. Slip Op. 51342(U) (App. Term 1st Dept. Sept. 27, 2016); Empire State Medical Supplies v. Sentry Ins., 55 Misc.3d 130(A), 2017 N.Y. Slip Op. 50403(U) (App. Term 2d, 11th & 13th Dists. Mar. 31, 2017). Here, the claim-specific denial is based solely on medical necessity. See pages 418-423 of Respondent's submission. For this reason, counsel's argument was rejected.

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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Amount Amended**	**Status**
	PARS Medical PC	**01/27/22 - 01/27/22**	**$1,053.18**	**$671.84**	**Awarded: $671.84**
Total			**$1,053.18**		**Awarded: $671.84**

B. The insurer shall also compute and pay the applicant interest set forth below. 04/13/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the No-Fault regulations. See generally, 11 NYCRR §65-3.9.

With respect to the interest accrual date (when arbitration was requested), see specifically, 11 NYCRR §65-3.9(c).

Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. "If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." 11 NYCRR §65-3.9(c). The Superintendent and the New York Court of Appeals

has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

As the claim was filed subsequent to the Sixth Amendment to 11 NYCRR §65-4 (Insurance Regulation 68-D) which took effect on February 4, 2015, Attorney's Fees shall be calculated pursuant to the amended terms, as follows:

20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of $1,360. [11 NYCRR §65-4.6(d)]. There is no minimum fee.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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

10/07/2022
(Dated)

Meryem Toksoy

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:
4d98603706d4a9159420bb312e0d6f5f

Electronically Signed

Your name: Meryem Toksoy
Signed on: 10/07/2022