

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stelton Radiology Corp
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-21-1232-9278
Applicant's File No.	n/a
Insurer's Claim File No.	0410569200101010
NAIC No.	22055

ARBITRATION AWARD

I, Theresa A. Kelly, 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, LT

1. Hearing(s) held on 10/20/2022
Declared closed by the arbitrator on 10/20/2022

Walter Pisary, Esq. from The Law Offices of Hillary Blumenthal P.C. (Melville)
participated in person for the Applicant

Robert Barnes from Geico Insurance Company participated in person for the
Respondent

2. The amount claimed in the Arbitration Request, **\$3,470.96**, 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 Assignor, LT, a then 41-year-old female, was injured as a passenger of an automobile involved in a motor vehicle accident on 7/1/2019. The Applicant billed \$3,022.84 (after amendment) for MRIs of the brain, cervical spine, right elbow and right shoulder performed on 7/24/2019 and 8/2/2019. Respondent denied the claim based upon two separate peer review reports by Harry E. Jackson, MD

The issue presented is whether the MRIs were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon 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. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

I find that Applicant has established its prima facie case in that Respondent has acknowledged receipt of the bills at issue through the issuance of a denial. It is well settled that an applicant establishes its prima facie showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004).

Cervical MRI -

Respondent's evidence demonstrates that the cervical spine MRI was timely denied based upon the peer review of Harry E. Jackson dated 9/17/2019. Dr. Jackson opines that the MRI was not medically necessary.

According to Dr. Jackson, the claimant had soft tissue injuries and the standard of care is physical therapy and analgesics for 6-12 week period. He opined that the MRI of the cervical spine would be indicated if plain films showed fracture or dislocation, if surgery was planned if there were red flags such as infection or tumor, or if there was progressive neurological changes. Otherwise, he states it would be premature to do an MRI prior to the 6-12 week period since the claimant may improve in that time and disc changes have been known to improve during the 6-12 week period.

Brain MRI - Respondent's evidence demonstrates that the brain MRI was timely denied based upon the peer review of Harry E. Jackson dated 9/17/2019. Dr. Jackson opines that the MRI was not medically necessary. He states that it is common to have headaches post trauma, bearing in mind that sometimes headaches comes from neck and shoulder injuries which cause spasms. He stated the correct course of action would be physical therapy and analgesics.

Right Shoulder - Respondent's evidence demonstrates the MRI of the right shoulder MRI was timely denied based on the peer review of Harry E. Jackson dated 8/2/2019.

Dr. Jackson determined that the MRI was not medically necessary. Dr. Jackson opined that there was no evidence of destabilization of the right shoulder. There was no explanation of how the results of the MRI would impact the treatment course. Additionally, he stated that there was no evidence that any surgical procedure was being contemplated. The standard of care would be 4-6 weeks conservative treatment.

Right Elbow - Respondent's evidence demonstrates the MRI of the right elbow MRI was timely denied based on the peer review of Harry E. Jackson dated 8/2/2019. Dr. Jackson determined that the MRI was not medically necessary. Dr. Jackson opined that there was no evidence of destabilization of the right wrist. There was no explanation of how the results of the MRI would impact the treatment course. Additionally, he stated that there was no evidence that any surgical procedure was being contemplated. The standard of care would be 4-6 weeks conservative treatment.

When an insurer relies upon a peer review report to demonstrate that a particular service was not medically necessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. As per the holding in Jacob Nir, M.D. v. Allstate Insurance Co., 7 Misc.3d 544 (2005), the peer reviewer must establish a factual basis and medical rationale to support a finding that the services were not medically necessary, including setting forth generally accepted standards in the medical community. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y.Civ. Ct. Kings Co. 2004).

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed]], Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147A, 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131, 824 N.Y.S.2d 759, 2006 NY Slip Op51871(U) (Sup. Ct. App. T. 2d Dep't 2006)]. I find Dr. Jackson presented evidence of a factual basis and a medical rationale, The results of the peer reviews provide a cogent medical rationale as to why the services were not medically necessary, thereby shifting the burden of persuasion to Applicant.

Applicant submitted the rebuttal of Dr. Leonid Shapiro who found the brain, cervical spine, right wrist and right shoulder MRIs to be medically necessary. He stated that Aetna considers magnetic resonance imaging (MRI) and computed tomography (CT) of the spine medically necessary when Suspected spinal cord injury secondary to trauma; Suspected spinal fracture and/or dislocation secondary to trauma (if plain films are not

conclusive). ACR guidelines clearly indicate that acute trauma is one of the indicators for the performance of MRI of the spine.

Dr. Shapiro states that the referral for MRI of the Brain is appropriate for the patients with headaches that are difficult to diagnose or that worsens or fails to respond to management.

In reviewing the documents and listening to oral arguments at the hearing, I find Respondent met its burden of lack of medical necessity for the MRIs. Applicant did not meet its burden of persuasion. The Assignor had already begun a course of conservative treatment. He would have us believe that every single person who has radiating pain and tenderness should undergo an MRI and everyone who has a headache after an accident would need a brain MRI. I find that this is not a credible standard of care for performing MRIs. He also states that MRI for the brain if the headaches fail to respond to management. The brain MRI was performed prior to determining if the Assignor was responding to conservative care. There was nothing to indicate that the treatment was dependent upon the results of the MRI twenty days following the accident.

In light of the above, I find in favor Respondent and uphold the denial of claims.

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 Suffolk

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

11/21/2022

(Dated)

Theresa A. Kelly

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:
227acb8403cb70db1da33a5414aaef43

Electronically Signed

Your name: Theresa A. Kelly
Signed on: 11/21/2022