

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

St Michael Physical Therapy PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-21-1216-4716

Applicant's File No. RFA21-300098

Insurer's Claim File No. 9UINY02154-03

NAIC No. 29742

ARBITRATION AWARD

I, Alina Shafranov, 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 02/01/2023
Declared closed by the arbitrator on 02/01/2023

Mohammad Anwar, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Janice Rosen, Esq. from Law Offices of Moira A. Doherty participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,286.86**, 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, "JJK", a 59-year-old female was involved in a motor vehicle accident as a passenger on February 2, 2020. The Assignor sought medical treatment for her injuries sustained in the MVA and eventually came under the care of St Michael Physical Therapy, PC. Applicant seeks reimbursement for physical therapy treatment for dates of service 1/4/21-2/25/21. Respondent timely denied reimbursement for the claim based on the Independent Medical Examination (IME) by Robert Cristofaro, M.D. performed on 12/9/20. Respondent did not assert a fee schedule defense. The only issue to be decided is whether the continuing orthopedic treatment after the IME cut-off date was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008).

In support of its contention that further orthopedic treatment was not medically necessary Respondent relies upon the IME of Robert Cristofaro, M.D. performed on 12/9/20. The physical examination revealed no objective positive findings. The ranges of motion were within normal limits, and all orthopedic and neurological testing was negative. Dr. Cristofaro diagnosed the Assignor's injuries as resolved and determined that no further orthopedic treatment is medically necessary.

I find that the examination report presents a factually sufficient cogent medical rational in support of Respondent's lack of medical necessity defense. Dr. Cristofaro did not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

To rebut the IME of Dr. Cristofaro, Applicant relies on numerous medical records. A review of Applicant's submission reveals it has failed to factually meet the burden of persuasion in rebuttal. I find that based on the totality of the evidence, Respondent's defense of lack of medical necessity for continuing orthopedic treatment is sustained. I find that the orthopedic examinations of the Assignor are not contemporaneous to the IME. Although these records confirm that treatment was rendered to the Assignor, they do not adequately support the medical necessity for ongoing orthopedic treatment after the IME cut-off. The evidence proffered by the Applicant does not adequately establish that the Assignor was in need of continued orthopedic treatment after the IME cut-off as it lacks temporal proximity, and the treatment notes lack sufficient content. I find that I am more persuaded by the comprehensive IME report of Dr. Cristofaro that further orthopedic treatment was not medically necessary. Furthermore, notwithstanding my determination that continued chiropractic care was medically necessary for this Assignor, as the chiropractic records presented were factually sufficient to rebut the negative findings of Dr. Perrie, I also find that the orthopedic IME evaluation has not been sufficiently refuted as there are no comprehensive contemporaneous orthopedic records in evidence.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Respondent.

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

02/08/2023
(Dated)

Alina Shafranov

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:
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Electronically Signed

Your name: Alina Shafranov
Signed on: 02/08/2023