American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accurate Monitoring LLC (Applicant)	AAA Case No.	17-22-1253-0519
	Applicant's File No.	AM-HER-BXNY-018
- and -	Insurer's Claim File No.	94724-02
	NAIC No.	24309
Hereford Insurance Company (Respondent)		

ARBITRATION AWARD

I, Lisa Capruso, 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 03/29/2023
   Declared closed by the arbitrator on 03/29/2023

   David Quinones, Esq. from Callagy Law, PC participated virtually for the Applicant

   Mark Zemcik, Esq. from Law Offices of Rubin & Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$337.84**, 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

   Applicant seeks reimbursement for the technical component of the intraoperative monitoring performed for the Assignor, a 53-year-old male, on 12/18/21, after an accident of 8/4/21. Respondent denied the claim based on Dr. Vijay Sidhwani's peer review of 5/3/22.

4. Findings, Conclusions, and Basis Therefor

   Applicant submitted a claim to the Respondent for intraoperative monitoring performed for the Assignor after an automobile accident that occurred on 8/4/21. Assignor, the driver of the vehicle, alleged injuries to the neck and back as a result. Assignor

underwent a lumbar discectomy on 12/18/21. In dispute is the technical component of the neurophysiologic intraoperative monitoring conducted during the surgical procedure which included EMG/NCVs. A no-fault provider establishes its prima facie entitlement to judgment by submitting proper evidentiary proof that it generated and mailed the prescribed statutory billing forms to the insurer, that the insurer received it, and that the no-fault benefits were overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co*. 5 A.D. 3d 742-43 (2d Dept. 2004).

Respondent denied the claim based on Dr. Vijay Sidhwani's peer review of 5/3/22. The burden shifts to the Respondent to demonstrate a lack of medical necessity for the items at issue. *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc 3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. *Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co*., 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); *King's Med. Supply Inc. v. Country Wide Ins. Co.*, 5 Misc 3d 767, 783 N.Y.S. 2d 448.

Dr. Sidhwani indicated that he had examined the Assignor on 2/4/22 (after the surgery date). It was noted that the Assignor had undergone two lumbar epidural steroid injections (10/7/21 and 11/4/21) and the Assignor reported significant relief which had improved following the second injection. Dr. Sidhwani found that the underlying lumbar percutaneous discectomy was not medically necessary as the standard of care for a lumbar sprain/strain with disc bulge or herniation is a course of conservative care for six to twelve weeks with the use of NSAIDS. The treatment does not include routine lumbar percutaneous discectomy following epidural steroid injections. Dr. Sidhwani stated that there was no indication for the performance of this procedure secondary to a lumbar sprain/strain.

Dr. Sidhwani found that the intraoperative neuromonitoring was not medically necessary as there is no clear evidence that such monitoring provides any advantage with regard to the outcome of the procedure and there is no clinical evidence to support the need for the procedure.

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. *West Tremont Medical Diagnostic P.C., v. GEICO*, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006). Applicant relied on the Assignor's medical records as rebuttal to the peer review. Dr. Elbaz recommended the lumbar percutaneous discectomy based on the Assignor's diagnosis of disc herniations at L4-5 and L5-S1. Since the underlying surgery is not in dispute herein, I will not discuss the medical necessity of the surgery. I find that the Applicant has not submitted any evidence which is sufficient to rebut the Respondent's peer review in connection with the claims for neuromonitoring. Dr. Elbaz did not discuss the use of neuromonitoring in his examination reports or the operative report. Applicant has not established the medical necessity of the neuromonitoring.

Accordingly, the Applicants' claim is 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 VT
SS :
County of Windham

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

03/31/2023
(Dated)

Lisa Capruso

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:
63ccf0b3b7728c95438b7ca771192ee8

Electronically Signed

Your name: Lisa Capruso
Signed on: 03/31/2023