

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-22-1249-9131

Applicant's File No. n/a

Insurer's Claim File No. 9VINY11115-01

NAIC No. 29742

ARBITRATION AWARD

I, John Kannengieser, 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 03/23/2023
Declared closed by the arbitrator on 03/23/2023

Dino DiRienzo from Dino R. DiRienzo Esq. participated virtually for the Applicant

James Scozzari from Law Offices of Moira A. Doherty participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,201.32**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended to **\$1,950.52** to comply with the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

Respondent stipulated to Applicant's prima facie case. Applicant stipulated to the timeliness of Respondent's denial.

Both parties stipulated that there are now no fee schedule issues.

3. Summary of Issues in Dispute

Applicant seeks payment for cervical & lumbar MRIs on 2/14/22 following MVA on 11/21/21; denied by Respondent as not medically necessary based on a peer review.

4. Findings, Conclusions, and Basis Therefor

The 33 year old female EIP (CC) was involved in an accident on 11/21/21 and thereafter sought medical treatment for her injuries. The bill in dispute is for cervical & lumbar MRIs on 2/14/22 in the total amended amount of \$1,950.52. Respondent denied the bill based on a peer review dated 4/14/22 by Eric Roth, MD.

There were no witnesses.

A peer review report relied upon by an insurer in timely denying a claim is a proper vehicle to assert the defense of lack of medical necessity. See *S & M Supply, Inc. v. Allstate Ins. Co.*, 2003 N.Y. Slip Op. 51191(U), 2003 WL 21960336 (App. Term 2d & 11th Dists. July 9, 2003); *Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp.*, 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003). A peer reviewer must establish a factual basis and medical rationale for the asserted lack of medical necessity of the health care provider's services. See *Amaze Medical Supply Inc. v Allstate Ins. Co.*, 12 Misc.3d 142(A), 824 N.Y.S.2d 760 (Table), 2006 N.Y. Slip Op. 51412(U), 2006 WL 2035559 (App. Term 2d & 11th Dists. July 12, 2006). "Where the defendant 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" (see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed]). *West Tremont Medical Diagnostic, P.C. v Geico Ins. Co.*, 13 Misc.3d 131(A), 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U) at 2, 2006 WL 2829826 (App. Term 2d & 11th Dists. Sept. 29, 2006).

Eric Roth, MD, in his peer review report dated 4/14/22, lists the records and reports he reviewed, and refers to medical literature, in coming to his conclusion that the cervical & lumbar MRIs were not medically necessary. He gives a brief history of the accident and indicates that the EIP was not examined in the ER. He discusses the EIP's complaints, examination findings and recommendations on initial examination of 12/13/21 by Rianne Karmin, PA, which included finding of cervical spine tenderness and spasm with decreased ROM, lumbar spine tenderness with decreased ROM, and impression of strain/sprain injuries. The PA prescribed Cyclobenzaprine, Ibuprofen, & Lidocaine 5% ointment, and ordered x-rays of the cervical, thoracic & lumbar spines and right shoulder, and MRIs of the cervical, thoracic & lumbar spines and right shoulder. Neurological exam on 1/14/22 was completely normal, and there was therefore no clinical indication for the studies at issue because there was no evidence of acute disc herniation with nerve impingement. The MRIs were ordered at the initial examination on 12/13/21, prior to the initiation of any conservative treatment. He cites various medical literature stating essentially that MRI is not appropriate before 4 to 6 weeks of

conservative therapy has been completed, except in the case of "red flags", including, among others listed, progressive neurological deficits.

I find that Respondent has submitted sufficient evidence to establish its defense based on lack of medical necessity, and the burden now shifts to Applicant to supply its own evidence of medical necessity.

Applicant relies on medical records and reports, and rebuttal dated 2/13/23 by Regina Moshe, MD (I note that Dr. Moshe is not the treating or referring doctor). She gives a brief history of the accident and states as a result of the accident, the EIP sustained injuries to the neck, right hand, mid back and lower back. Dr. Moshe discusses chiropractic evaluations, acupuncture evaluations, the 12/13/21 "progress note" by Rianne Karmin, PA (when the MRIs were ordered), conservative treatment records, and the 1/14/22 evaluation by Dunreath Anderson, NP. She states that it is common knowledge that when one presents after significant trauma with severe pain, positive exam findings, and/or other soft tissue structures trauma, it is reasonable to get an MRI earlier to detect any abnormalities and to diagnose accordingly. She discusses MRIs in general and the results of the MRIs at issue, and states that it should be performed to enable accurate diagnosis and prognosis. She states: "though the guideline of 4-6 weeks of conservative therapy does exist, it should also be considered that it is not every time possible to wait for such a long period, at times according to the (EIP's) age, severity of complaints, pain threshold, tolerance, some decisions are made by the medical providers, in this case, all factors present justify that the decision of MRI studies was needed to act promptly and decide the further line of treatment. Thus, the performance of the MRI studies were medically necessary and within the standard of care".

After reviewing all of the medical records and listening to the arguments of the parties, I find as a matter of fact that Applicant has not submitted sufficient evidence to sustain its burden of proving the medical necessity of the cervical & lumbar MRIs, and I therefore find in favor of Respondent. I am persuaded by the peer review of Dr. Roth that the MRIs were ordered prematurely.

Applicant's claim is therefore denied in its entirety.

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 NY

SS :

County of Nassau

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

04/19/2023
(Dated)

John Kannengieser

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:
26ae01ab23db6d81fe48eb0353a24129

Electronically Signed

Your name: John Kannengieser
Signed on: 04/19/2023