

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Global Surgery Center LLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1260-5232

Applicant's File No. SS-221532

Insurer's Claim File No. 1096779-03

NAIC No. 16616

ARBITRATION AWARD

I, Lester Hill, 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 04/17/2023
Declared closed by the arbitrator on 04/17/2023

Gregory Itingen from Samandarov & Associates, P.C. participated virtually for the Applicant

Joseph Farrell from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,555.44**, 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

Were the lumbar branch block injections provided to the EIP on April 21, 2022 medically unnecessary based upon the peer report by Dr. Mitchell Ehrlich and the IME conducted by Dr. Eric Roth on September 14, 2021? This claim is for the facility fee for the procedure. The 39 year-old EIP was involved in a motor vehicle accident on April 17, 2021 and received treatment for injuries to the neck, low back, right knee and right ankle.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the lumbar branch block injections provided to the EIP on April 21, 2022 were medically unnecessary. This claim is for the facility fee for the procedure.

The basis of the respondent's timely denial is the peer report by Dr. Mitchell Ehrlich and the IME conducted by Dr. Eric Roth on September 14, 2021.

I have reviewed the documents contained in the electronic case folder as of April 17, 2023. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on April 17, 2023.

An Applicant establishes a prima facie showing of its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and the payment of No-Fault benefits were overdue. *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D. 3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Ins. Co.*, 57 A.D. 3d 659, 868 N.Y.S. 2d 759 (2d Dept. 2008); *New York and Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D. 3d 512, 818 N.Y.S. 2d 583 (2d Dept. 2006); *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, 30 A.D. 3d 727, 816 N.Y.S. 2d 587 (3d Dept. 2006); *Nyack Hospital v. Metropolitan Property & Casualty Insurance Co.*, 16 A.D.3d 564, 791 N.Y.S. 2d 658 (2d Dept. 2005).

The submission of Respondent's NF-10 denial of claim form established that the insurer received the claim referenced therein as having been submitted by the provider and that the insured did not pay the claim. *Lopes v. Liberty Mutual Ins. Co.*, 24 Misc.3d 127 (A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

New York's Comprehensive Motor Vehicle Insurance Reparation Act requires an insurance carrier to reimburse an injured party (or his or her assignee) for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med.*, P.C. 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007), if raised in a denial that is (1) timely, *Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co.*, 226 A.D. 2d 613 (2d Dept. 1996), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR Section 65-3.4 (11); *Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D. 3d 564 (2d Dept. 2005); *Nyack Hosp. v. State Farm Mut. Auto Ins. Co.*, 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct.25 2004), and (3) promptly apprises the Applicant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated, *General Accident Ins. Group v. Cirucci*, 46 N.Y. 2d 862, 414 N.Y.S. 2d 512 (1979); *New York University Hosp. Rusk Ins. V. Hartford Acc. & Indem. Co.*, 32 A.D. 3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co., 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on April 17, 2021. The EIP was treated at the emergency room of St. Barnabas Hospital on the day the accident. The EIP presented to Dr. Gupta on April 26, 2021 with complaints of pain in the neck, low back, right knee and ankle. The examination reported reduced range of motion of the cervical and lumbar spine, right ankle and knee and tenderness in the cervical and lumbar musculature, right knee and right ankle, and decreased sensation in the cervical and lumbar dermatomes. The EIP underwent an MRI of the right knee on May 13, 2021 which reported tears of the medial and lateral menisci. The EIP underwent an MRI of the right ankle on May 13, 2021 which reported osteoarthritis. The EIP underwent MRIs of the cervical and lumbar spine on May 14, 2021 which reported disc herniation from L2 through S1 and C5-C6 and disc bulges from C3 through C5 and C6-C7. The EIP was administered lumbar epidural steroid injections on July 1, 2021.

Dr. Roth conducted the physical medicine and rehabilitation IME on September 14, 2021, at which time the EIP complained of pain in the neck, mid back, right knee and right ankle. The examination reported normal range of motion of the cervical and lumbar spine with negative orthopedic testing for the cervical and lumbar spine and normal neurological findings, normal range of motion of the right knee and right ankle and negative orthopedic findings. The conclusion was that the EIP needed no further orthopedic treatment.

The EIP was administered cervical epidural steroid injections on December 17, 2021. The EIP was administered a thoracic epidural steroid injection on January 20, 2022. The EIP presented to Dr. Khan on February 1, 2022 with complaints of pain in the cervical and lumbar spine. The EIP reported decreased sensation in the right arm. The examination reported reduced range of motion of the cervical and lumbar spine with tenderness in the cervical and lumbar spine and reduced deep tendon reflex in the right patellar. The EIP presented to Dr. Gupta on February 21, 2022 with complaints of pain in the neck, mid back, low back, right ankle and right knee. The examination reported reduced range of motion of the cervical and lumbar spine, right ankle and right knee and decreased sensation in the cervical and lumbar dermatomes. The EIP was administered in lumbar branch block injections on March 24, 2022 and April 21, 2022.

Dr. Ehrlich states that the lumbar branch block injections were medically unnecessary. He states that branch blocks injections are for facet mediated pain. He states that the EIP had a radicular component, that the EIP symptoms were diffuse and bilateral and there was no evidence of facet mediated pain. He states that the MRI of the lumbar spine did not report a facet component and that lumbar branch block injection should only be administered if there is a correlation with the MRI of facet mediated pain.

I find that the respondent has demonstrated by sufficient factual basis and medical rationale that the lumbar medial branch block injections provided to the EIP on March

24, 2022 were medically unnecessary. I find the peer report persuasive that medial branch block injections are for patients with the presence of facet mediated pain. Dr. Ehrlich states there was no evidence of chronic facet mediated pain as EIP had diffuse bilateral pain in the lumbar spine. I find the peer report persuasive that there was no significant facet component reported in the MRI study. I find the respondent has demonstrated that the lumbar branch block injections performed on March 24, 2022 were medically unnecessary significantly, the applicant submitted no rebuttal to the assertions contained in the peer report. Given my findings regarding the peer report, the issue of the IME is moot.

Accordingly, applicant's claim is 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, Lester Hill, 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)

Lester Hill

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:
269d2ab8d2ea207ec38208f996ea9f62

Electronically Signed

Your name: Lester Hill
Signed on: 04/19/2023