

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New Age Medical PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-22-1253-2137

Applicant's File No. 353864

Insurer's Claim File No. 9VINY10181-02

NAIC No. 29742

ARBITRATION AWARD

I, Dimitrios Stathopoulos, 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 08/01/2023
Declared closed by the arbitrator on 08/01/2023

Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

Usman Nawaz, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$966.54**, 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

Assignor was then a 46-year-old male involved in a motor vehicle accident on 10/30/21. Consequently, Assignor sustained injuries for which the Applicant provided an MRI of the left knee. Respondent timely denied reimbursement of the MRI predicated on a peer review conducted by Dr. Howard A. Kiernan on 2/7/22. Thus, the issues to be determined are:

Whether Applicant is entitled to reimbursement for services rendered to the Assignor that Respondent denied based upon a peer review?

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking \$966.54 for an MRI of the Assignor's left knee on 11/9/21.

This award is rendered upon the oral arguments of the parties and the documentary evidence submitted by the parties. The documentary evidence submitted by the parties consists of the documents contained within the American Arbitration Association's ADR Center for this matter as of the above declared closed date.

Pursuant to 11 NYCRR 65-4.5(o) (1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. It should be noted that prior to the commencement of the hearing I advised the parties appearing at the hearing that approximately 25 years ago I worked at the same law firm as Applicant's counsel. Neither party had any objections to my arbitrating this matter.

This matter is linked to AAA case number 172212436968, 172212598274, 172212525956, 172212608875, 172212536745, and the linked matters were arbitrated before this arbitrator.

Assignor was then a 46-year-old male restrained front seat passenger of an automobile involved in a motor vehicle accident on 10/30/21. There was no reported loss of consciousness, airbag deployment, lacerations, fractures, or emergency room treatment.

On 11/2/21, Assignor consulted Dr. Shoirakhon Bakieva's office with complaints that included neck pain, back pain, knee pain and ankle pain. Neck pain was noted to radiate to the back and there was no radiating pain with the back pain. Physical examination of the cervical spine found decreased range of motion, and positive orthopedic tests. Physical examination of the lumbar spine found tenderness, spasm, decreased range of motion and positive straight leg raise test. Examination of the knees found tenderness, decreased range of motion and positive valgus and varus stress tests. Examination of the ankles found reduced ability to bear weight, and tenderness, syndesmosis and positive talar tilt test and squeeze test to both ankles. Motor strength was reduced in the knees and ankles graded at 4/5. The diagnosis included knee and ankle derangements. Treatment recommendations included physical therapy and the disputed MRI.

The disputed MRI of the left knee on 11/9/21 revealed findings suggestive of a partial tear of the ACL, LCL and medial meniscus, joint effusion, and chondromalacia.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. See, Mary Immaculate Hospital v.

Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004); Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc 3d 128[A], 2003 NY Slip Op 51701 (U) (App Term, 2d and 11th Jud Dists 2003).

Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007).

Respondent timely denied the disputed services predicated on a peer review conducted by Dr. Howard A. Kiernan on 2/7/22.

The Respondent must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. See, Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co., 12 Misc.3d 128(A), 2006 NY Slip Op 50963 (U) (App Term 1st Dept. 2006). A peer review report's factual basis may be insufficient if it fails to provide specifics of the claim, is conclusory, or otherwise lacks a basis in the facts of the claim. Nir v. Allstate Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005). Every peer review requires individual scrutiny to determine whether the burden should be shifted back to the claimant to submit contrary expert proof. Novacare Medical P.C. v. Travelers Property Casualty Ins. Co., 31 Misc.3d 1205(A), 927 N.Y.S.2d 817 (Table), 2011 N.Y. Slip Op. 50500(U) at 3-4, 2011 WL 1226956 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

Dr. Kiernan sets forth a standard of care that indicates a patient should undergo conservative care for at least 3 to 6 months before considering an MRI of the right knee. Dr. Kiernan then asserts that in this instance, the MRI scans to the Assignor's knee were ordered prematurely with no meaningful attempt to undergo conservative treatment.

Determination

Based upon the evidence submitted and the arguments of the parties, I find in favor of the Respondent. Dr. Kiernan set forth a competent standard of care that requires an attempt at conservative treatment before considering MRIs of the knees. In this case, the records corroborate Dr. Kiernan's assertion that the left knee MRI was premature as it was prescribed and rendered approximately a week after the accident without Assignor undergoing the requisite conservative care as per the standard of care set forth by Dr. Kiernan. Applicant failed to rebut or refute this standard of care or show that the Applicant was in compliance with this standard of care when rendering the disputed MRI to Assignor's left knee. 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 Queens

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

08/02/2023
(Dated)

Dimitrios Stathopoulos

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:
0148efce046759e4a82f64008caa03bb

Electronically Signed

Your name: Dimitrios Stathopoulos
Signed on: 08/02/2023