American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Spine & Pain Consultant, PLLC (Applicant)	AAA Case No.	17-22-1277-4892
	Applicant's File No.	A35272
- and -	Insurer's Claim File No.	1093074-02
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, John Langell, 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 09/27/2023
   Declared closed by the arbitrator on 09/27/2023

   Ashley Andrews, Esq. from Munawar & Hashmat LLP participated virtually for the Applicant

   Janna El Jamal, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,866.40**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount in controversy has been amended to 396.76, reflecting the withdrawal of one of the three bills originally in dispute.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   The Assignor is a then 37 year old female who was injured in an automobile accident on 12/25/20. Assignor underwent therapeutic injections on 2/10/22, followed by medical office visits on 5/10/22 and 7/8/22. The Applicant's claim for the 2/10/22 services has now been withdrawn. Reimbursement for the treatment provided on 5/10/22 and 7/8/22 was timely denied by the Respondent on the basis of an IME. The Respondent has

affirmatively represented that no other issues were being raised in regard to the treatment rendered on 5/10/22 and 7/8/22, including fee schedule issues. Accordingly, the sole issue for resolution at this hearing is whether the presently disputed treatment was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ECF, and the oral arguments presented by the parties' representatives. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ECF maintained by the American Arbitration Association.

The submission and receipt of Applicant's claims having been established by way of the evidence submitted herein, the burden of production initially lies with Respondent to establish a prima facie case of lack of medical necessity. Respondent's burden can be satisfied by an IME report which sets forth both a factual basis and medical rationale for the asserted denial. See, generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

To establish the defense of lack of medical necessity, Respondent relied on the IME report of Dr. Joseph Margulies, an Orthopedist. Dr. Margulies' examination is dated 8/12/21. He documents a normal examination, including normal ranges of motion, negative orthopedic testing, a normal neurological examination, and the absence of tenderness and spasm. Dr. Margulies concluded that Assignor's injuries, including a right knee injury that had undergone arthroscopic surgery, were all resolved, and so did not require any additional medical treatment.

I find that Respondent's IME report has satisfied the applicable burden of production, and that the ultimate burden of persuasion regarding the medical necessity of the disputed treatment lies once again with Applicant. See, again, generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., supra.

Applicant has submitted a formal rebuttal to Respondent's IME report. Applicant's rebuttal report was authored by Dr. Ajax Yang, the Assignor's treating physician. Dr. Yang notes, among other things, that on 09/17/21, the Assignor presented with reduced cervical range of motion, tenderness on palpation, and positive cervical and lumbar provocative testing, including positive straight leg raising. He says that, notwithstanding Dr. Margulies' IME report, the records of treatment support the need for continued treatment.

The records of treatment available for my review include records dated 7/9/21, 9/17/21, and 10/12/21, which were generated before and after the presently disputed IME report. Those records document various positive findings, including persistent knee complaints that were resistant to conservative treatment, reduced range of motion, tenderness on palpation, and positive provocative testing.

Based on all the materials before me, and having carefully considered the reports and records submitted by both parties, I find that the Applicant has credibly rebutted the findings and conclusions of the Respondent's IME examiner. I note that the underlying records of treatment are generally consistent with the arguments of the Applicant's rebutting physician, and that those records are also generally inconsistent with the findings documented by the Respondent's IME examiner. I note that the Respondent's IME examiner documents significant contemporaneous complaints of pain. Overall, I credit the underlying records of treatment, together with the report of Dr. Yang. I note that I have previously found that the present Applicant had rebutted the findings and conclusions in Dr. Margulies' report in Case No.'s 17-21-1231-9560, 17-22-1251-1835, 17-22-1259-7493, and 17-22-1265-5345, in light of which I also note that the Respondent's repeated litigation of essentially the same issue is inconsistent with the doctrine of Collateral Estoppel, which provides that a party may be precluded from re-litigating an issue that has already been determined in a prior arbitration. See, Ryan v. New York Telephone, 42 N.Y.2d 494, 478 N.Y.S.2d 823, 467 N.E.2d 487 (1984). In any event, I continue to be more persuaded by the underlying records of treatment and the Applicant's rebuttal report than by the Respondent's IME report, and so find that the Applicant has proven the medical necessity of the presently disputed treatment by a preponderance of the credible evidence.

Any additional issues not referred to hereinabove are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

Accordingly, the Applicant's amended claim is upheld.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Spine & Pain Consultant, PLLC	**02/10/22 - 02/10/22**	**$1,469.64**		**Withdrawn with prejudice**
	Spine & Pain Consultant, PLLC	**05/10/22 - 05/10/22**	**$127.41**		**Awarded: $127.41**
	Spine & Pain Consultant, PLLC	**07/08/22 - 07/08/22**	**$269.35**		**Awarded: $269.35**
Total			**$1,866.40**		**Awarded: $396.76**

B. The insurer shall also compute and pay the applicant interest set forth below. 12/06/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Consistent with applicable regulations of the New York State Insurance Department, including 11 NYCRR 65-3.9 (c) and 11 NYCRR 65-4.2 (b), I find that Arbitration was requested on 12/6/22, and so find that interest shall accumulate from that date at the simple rate of 2 percent per month, calculated on a pro rata basis using a 30 day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of $1,360.00. See 11 NYCRR 65-4.6(d).

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of New York

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

09/29/2023
(Dated)

John Langell

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:
5b6a6a9310c993fd5c280fcfc97783d2

Electronically Signed

Your name: John Langell
Signed on: 09/29/2023