

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-23-1284-2393

Applicant's File No. STLG22-57190

Insurer's Claim File No. 1055870-02

NAIC No. 16616

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (BH)

1. Hearing(s) held on 09/28/2023
Declared closed by the arbitrator on 09/28/2023

Coleen Terry, Esq. from Strauss Terry Law Group, PLLC participated virtually for the Applicant

Anthony Troise, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$959.61**, 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

EIP (BH), is a 57-year old female, who was involved in a motor vehicle accident on March 29, 2019. Following the accident, EIP sought medical treatment. On May 9, 2019, an MRI was conducted of EIP's thoracic spine.

Applicant's claim for reimbursement is denied by Respondent based on a lack of coverage defense, and a peer review by David Trimboli, dated August 19, 2019.

The issues to be determined at the hearing: Whether Respondent's defenses are sustainable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an 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. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

EIP (BH), is a 57-year old female, who was involved in a motor vehicle accident on March 29, 2019. Following the accident, EIP sought medical treatment. On May 9, 2019, an MRI was conducted of EIP's thoracic spine.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received, and that payment of no-fault benefits were overdue. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find Applicant establishes a prima facie case. The burden now shifts to Respondent.

Applicant's claim for reimbursement is denied by Respondent based on a lack of coverage defense, and a peer review by David Trimboli, dated August 19, 2019.

Medical Necessity

When an insurer relies upon a peer review report to demonstrate that a particular service was not medically necessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. As per the holding in Jacob Nir, M.D. v. Allstate Insurance

Co., 7 Misc.3d 544 (2005), the peer reviewer must establish a factual basis and medical rationale to support a finding that the services were not medically necessary, including setting forth generally accepted standards in the medical community. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. Kings Co. 2004).

In a peer review dated August 19, 2019, David Trimboli, D.C., citing medical authority, avers that the thoracic spine MRI was not medically necessary. Dr. Trimboli, a chiropractor, reports that EIP's accident occurred on 3/29/19. The records reveal that MRIs of the cervical, thoracic, and lumbar spine were ordered at EIP's initial evaluation on 4/11/19, by John P. Bucci, D.C. Dr. Trimboli avers that EIP sustained a whiplash (sprain/strain) injury which would not require the imaging study of the thoracic spine. There were no significant progressive neurological deficits or red flags (bowel/bladder dysfunction, paralysis, etc...) noted on physical examination. Based on the provided medical records for review, the causally related injury was consistent with a sprain/strain injury of the spine. The history and physical exam findings were insufficient and did not warrant the MRI testing of the thoracic spine.

Based upon the foregoing, I find that Respondent has set forth a cogent medical rationale in support of its defense that the MRIs performed were not medically necessary. Accordingly, the burden now shifts to Applicant as to the medical necessity of the MRI testing.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th Ed]], Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147A, 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131, 824 N.Y.S.2d 759, 2006 NY Slip Op51871(U) (Sup. Ct. App. T. 2d Dep't 2006)].

Preliminarily, based upon a review of the records in this case, I note that EIP's thoracic spine MRI was prescribed by a chiropractor: John P. Bucci, D.C.

In response to the peer review by Dr. Trimboli, Applicant relies on a rebuttal by a medical doctor, Paresh Rijsinghani, M.D., dated 12/21/22. Dr. Rijsinghani notes that EIP's initial evaluation revealed subjective complaints to the mid back, and EIP's findings of suspected spinal cord injury was the medical indication that warranted MRI testing. Citing medical authority and guidelines, Dr. Rijsinghani avers that when spinal cord injury is suspected, MRIs may be performed without the necessity for a prescribed waiting period and a failure of conservative treatment. Dr. Rijsinghani concludes that the MRI of the thoracic spine was medically necessary.

After a review of the medical records and various reports, and consideration of the arguments advanced by the representatives from both parties, with respect to the thoracic spine MRI, I find the peer report of Dr. Trimboli persuasive, as it sets forth a sufficiently detailed factual basis and medical rationale to successfully establish lack of medical necessity. I find that the submitted medical records fail to challenge or refute the opinion of Dr. Trimboli. The records fail to reveal any compelling reason that would justify prescribing an MRI study of the thoracic spine upon EIP's initial evaluation. In addition, I am not persuaded by the content the rebuttal by a medical doctor. EIP was referred for a thoracic spine MRI by a chiropractor. The issue presented in this case, is whether there is a chiropractic necessity for the MRI study of the thoracic spine. The peer review fails to establish Dr. Rijsinghani's expertise in the field of chiropractic. Chiropractics is a separate and distinct field from the practice of medicine so that a physician's standard is not controlling upon a chiropractor in the practice of his or her profession. See, Taormina v. Goodman, 63 A.D.2d 1018 (2d Dept. 1978).

Accordingly, based on all of the foregoing, Applicant's claim for reimbursement for the MRI of the thoracic spine, conducted on 5/9/19, is denied.

Any and all remaining defenses by Respondent are deemed moot in light of the foregoing.

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

10/03/2023

(Dated)

Nicholas Tafuri

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:
f280086ae536a626b9c79a7e488e26bf

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 10/03/2023