

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Next Generation Diagnostic Imaging PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-22-1249-6165
Applicant's File No.	90328, 90327
Insurer's Claim File No.	0682473650000003
NAIC No.	35882

ARBITRATION AWARD

I, Debbie Kotin Insdorf, 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 09/18/2023
Declared closed by the arbitrator on 10/03/2023

Adam Waknine from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

Iqra Shah from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,935.38**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The billed amount is in accordance with the fee schedule.

3. Summary of Issues in Dispute

The Applicant is seeking reimbursement for MRIs performed 3/04/22, following a motor vehicle accident on 2/10/22 involving Assignors AT and VK. The Respondent issued timely denials based on peer reviews by Dr. Kevin S. Portnoy on 4/25/22.

4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for \$1,935.38 for MRIs performed on 3/04/22.

The Respondent issued timely denials based on peer reviews.

There are two Assignors, AT and VK. There were no medical reports submitted by Applicant or Respondent.

On 2/10/22, twenty two year old Assignor AT and twenty nine year old Assignor VK were involved in a motor vehicle accident. They were examined by Dr. Gorelik with complaints of neck pain. Thereafter they were referred for an MRI of the cervical spine.

On 3/04/22, MRIs of the cervical spine were performed.

On 4/25/22, Dr. Kevin S. Portnoy reviewed documents made available to him to determine the medical necessity for Assignor AT's MRI performed 3/04/22.

On 4/25/22, Dr. Portnoy also reviewed documents made available to him to determine the medical necessity for Assignor VK's MRI performed 3/04/22.

Dr. Portnoy did not find the MRIs medically necessary.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a matter of law 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." Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co., 196 Misc.2d 801, 766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply the facts of the case and only then may she properly conclude the services in issue were

not medically necessary due to the provider's violation of the generally accepted medical standards.

Dr. Portnoy wrote that the standard of care for MRIs of the musculoskeletal system after a motor vehicle accident begins with a course of conservative treatment. If the injured party does not respond and there is evidence of progressive neurological or orthopedic deficit, then an MRI may be indicated.

In this case, the Assignors sustained soft tissue injuries. An evaluation by a chiropractor, ordering plain radiographs, rest and or conservative treatment for 6 to 8 weeks is necessary. After this period, if there is deterioration in the condition or progressive worsening neurological deficits, an MRI may be indicated. Here, there wasn't enough time given for conservative treatment. Ordering the MRI would not alter or change the treatment in a significant way.

Dr. Portnoy pointed out that there were no records from referring Dr. Gorelik to indicate that he needed the MRIs because he suspected a lesion of the spinal cord, intervertebral discs, tumor processes, syringomyelia or progressive neurological dysfunction.

In the instant case, the conclusions of the peer reviewer upon which the denials were based were supported by a sufficient factual foundation and medical rationale to warrant rejection of Applicant's claim and accordingly, were sufficient to support the defense of medical necessity.

The burden now shifts to applicant to refute Respondent's evidence. See, Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 2008 NY Slip Op 50347 (U) (App Term 2d Dept., Feb. 21, 2008); A. Khodadadi Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 16 Misc.3d 131,(A), 841 N.Y.S.2d 824 (Table), 2007 NY Slip Op 51342 (U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007).

Rebuttals were written by Dr. Drora Hirsch. She wrote, "The American College of Radiology Practice Guidelines for the performance of MRI of the adult spine has various indications for performing an MRI for the evaluation of, the nature of, and extent of injury to the spinal cord, vertebral column, ligaments, and intraspinal and paraspinal soft tissues following trauma. MRI of the spine is medically necessary when any of a number of criteria, such as recent significant trauma, or milder trauma in patients about age 50; any suggestion of abnormal neurologic findings below the level of injury; progressive neurologic deficit; persistent unremitting pain with or without positive neurologic findings. The claimant's clinical scenario corresponds with the highlighted variation."

The doctor underlined "recent significant trauma", but does not provide any details about the motor vehicle accident of 2/10/22 or specifics about injuries sustained by these Assignors. Dr. Hirsch merely noted the Assignors sustained "multiple injuries" as a result of the accident. There was no information provided about the examination

findings of Dr. Gorelik.

Dr. Hirsch points out, "I believe that waiting for weeks for the conservative treatment to fail or for the symptoms to worsen or progress in a patient already in immense pain who had suffered traumatic injuries in the motor vehicle accident could ultimately be detrimental for the patient's recovery if the extent of the injuries is not known beforehand." However, where does it state the Assignors had immense pain? In what medical report does it state the Assignors suffered traumatic injuries?

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I am upholding the Respondent's denials. Dr. Hirsch failed to refute the peer reviewer's contention that there was no indication the MRIs were needed at the time of the performance.

Accordingly, the Applicant's claim is denied.

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 New York

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

10/11/2023
(Dated)

Debbie Kotin Insdorf

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:
ecd150201cdc417dc278854b3aca1641

Electronically Signed

Your name: Debbie Kotin Insdorf
Signed on: 10/11/2023