

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PARS Medical PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No.

Applicant's File No.

Insurer's Claim File No.

NAIC No.

17-23-1297-8056

n/a

0669425506
2MM

29688

ARBITRATION AWARD

I, Elyse Balzer, 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: JM

1. Hearing(s) held on 09/27/2023
Declared closed by the arbitrator on 09/27/2023

Rima Nayberg, Esq from Law Offices of Rima Nayberg P.C participated virtually for the Applicant

Lauren Piacentini, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,180.82**, 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

This arbitration seeks payment for surgeon fees and assistant nurse practitioner fees for performing a percutaneous cervical discectomy on 11/22/22 on the 42-year-old male eligible injured person JM for injuries sustained as a driver of a motor vehicle involved in an accident on 4/27/22.

The issue is:

Has respondent proven the lack of medical necessity of surgeon fees and assistant nurse practitioner fees for performing a percutaneous cervical discectomy based on a peer review by Dr. Peter Chiu?

Respondent did not raise any issue of exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via Zoom, as all arbitration hearings have been conducted telephonically since March 15, 2020 and via Zoom since February 2021 due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

On 10/5/22, at Lenox Hill Radiology at LHR Harlem, JM underwent a CT of the cervical spine without contrast.

The impression of the 10/5/22 cervical CT was:

No acute fractures or subluxations of the cervical spine.

Multilevel degenerative changes of the cervical spine contributing to mild to moderate spinal canal stenosis and cord impingement at C4-5 and ventral cord impingement at C6-7.

Moderate left and mild right foraminal stenosis at C3-4, moderate on the left at C4-5, and mild to moderate on the left and mild on the right at C6-7.

Straightening of the cervical lordosis.

On 10/31/22 JM consulted with Dr. Isaac Kreizman, MD of applicant's medical practice. At that time JM had been receiving physical therapy, NSAIDs & topical analgesics since the accident of 4/27/22.

On 10/31/22, however JM still suffered from severe pain with neck pain radiating into the arms, with numbness, tingling, muscle weakness & decreased range of motion.

The 10/21/22 physical exam of the neck found muscle tenderness throughout the cervical spine, most pronounced over left C3-C4. There was significant decrease in cervical range of motion in every plane. There was a positive distraction test & positive shoulder abduction test. Fluoroscopy was performed, which revealed "positive disk space narrowing with osteophyte formation." There was decreased muscle strength in all extremities. There was decreased sensation & decreased reflexes in all extremities. CT scan films were reviewed.

On 11/22/22 Dr. Kreizman re-examined JM and, at Surgicare of Brooklyn, with the assistance of nurse practitioner Gregory Abramov FNP, performed a percutaneous cervical discectomy at midline C3-4 on JM. Epidurography was also performed.

Respondent denied the claim for surgeon fees and assistant nurse practitioner fees for performing a percutaneous cervical discectomy on 11/22/22 based on a peer review, dated 1/11/23, of Dr. Peter Chiu, MD.

Dr. Chiu incorrectly wrote that the disputed surgery was not necessary "performed on date of service 11/22/22 especially by a non-surgeon."

Dr. Kreizman performed the disputed surgery, not the nurse practitioner Abramov, and Dr. Kreizman is a licensed medical doctor in the State of New York.

Dr. Chiu claimed that "Dr. Kreizman is a physiatrist and not a trained (eg medical residency) surgeon.

Dr. Chiu did not cite any generally accepted standard of care regarding the qualifications of a physiatrist to perform a percutaneous discectomy.

Dr. Chiu confused the procedure in issue, which is "percutaneous", with a traditional discectomy which are performed by neurosurgeons and orthopedists.

Dr. Chiu's reasoning is faulty, not credible and not persuasive regarding the qualifications of Dr. Kreizman to perform a percutaneous discectomy.

Dr. Chiu loaded his peer review with extensive quotes about the purposes of discectomy, pain management and spinal stenosis without any relevant quotes about the generally accepted standard of care for performing percutaneous cervical discectomy. One very lengthy quote was about lumbar discectomy without mention of cervical discectomy. None of the quotes contained the requisite standard of care necessary to prove that the disputed surgery deviated from generally accepted of care.

In addition, Dr. Chiu did not specifically address JM's injuries, the failure of these injuries to resolve despite months of conservative care, and the significant positive neurological findings and pain complaints present on 10/21/22 and 11/22/22.

Applicant submitted a rebuttal from the surgeon Dr. Kreizman.

Dr. Kreizman addressed the peer review in a forthright manner and accurately pointed out that Dr. Chiu had failed to make any citation to the New York State medical treatment guidelines about discectomy. Dr. Kreizman noted the criteria for performing percutaneous disc compression issued by the American Society of Interventional Pain Physicians and showed that JM met those criteria.

A peer review's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards.

A peer review's medical rationale may be insufficient if not supported by evidence of the "generally accepted medical/professional practice." Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d 608, 777 N.Y.S.2d 241, 2004 NY Slip Op 24034 [Civ Ct, Kings County 2004].

"Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." (Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d at 616, *supra*.)

If the plaintiff offers evidence that its medical services were consistent with generally accepted medical practice, the defendant's peer review will be afforded less weight and defendant may fail to sustain its burden of proof at trial. (*see Elm Medical P.C. v. American Home Assurance Co.*, 2003 N.Y. Misc. LEXIS 1337, 2003 NY Slip Op. 51357U [Civ Ct 2003] [Defendant peer review doctor's conclusion that the electrodiagnostic testing was not "properly documented" did not contradict plaintiff's testimony of medical necessity and defendant failed to carry its burden].)

In this case I find that Dr. Chiu's peer review fails to meet respondent's burden of proof of proving lack of medical necessity of the disputed surgery.

Respondent has not made any objection to applicant's fees or presented any evidence to contradict applicant's fees.

Applicant's claim is granted 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	PARS Medical PC	11/22/22 - 11/22/22	\$404.10	Awarded: \$404.10
	PARS Medical PC	11/22/22 - 11/22/22	\$3,776.72	Awarded: \$3,776.72
Total			\$4,180.82	Awarded: \$4,180.82

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

From 5/10/23 to date of payment of the award

C. Attorney's Fees

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

In cases filed before 2/4/15, the Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e)(effective April 5, 2002). For cases filed after 2/4/15, the respondent shall pay the Applicant an attorney's fee in accordance with newly promulgated 11 NYCRR 65-4.6 (d), as amended by the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-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 Westchester

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

10/26/2023
(Dated)

Elyse Balzer

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:
5e2c23821060d0f06d7ee55f08f369e6

Electronically Signed

Your name: Elyse Balzer
Signed on: 10/26/2023