

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ambulatory Surgical Center of Pompton Lake (Applicant)	AAA Case No.	17-22-1274-8410
	Applicant's File No.	TLD22-1015646
- and -	Insurer's Claim File No.	97427-04
Hereford Insurance Company (Respondent)	NAIC No.	24309

ARBITRATION AWARD

I, Michael Resko, 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: Claimant

1. Hearing(s) held on 10/31/2023
Declared closed by the arbitrator on 10/31/2023

Kevin D'Arcy Esq. from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Chris Fingerhut Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,823.27**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated and agreed that (i) Applicant has met its *prima facie* burden by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim was mailed to and received by Respondent; (ii) Respondent's denial of the subject claim was timely issued; and (iii) the amount claimed does not exceed the maximum permissible charges under the fee schedule applicable to the disputed services.

3. Summary of Issues in Dispute

The EIP/Assignor is referred to herein as Claimant. Claimant is a 65-year-old female passenger injured in a motor vehicle accident on 03/15/22.

Applicant seeks payment of a single claim for a facility fee related to the performance of cervical facet medial branch block radiofrequency nerve ablation and right shoulder intra-articular joint injection on date of service 06/06/22.

Respondent denied this claim based on a peer review report by Gary J. Florio, MD (dated 07/28/22).

Applicant has submitted a rebuttal of the peer review reports by Irfan Alladin, MD (dated 08/23/23).

The following evidence was submitted, reviewed, and considered: All documents contained in the ADR Center as of the date the hearing was declared closed.

4. Findings, Conclusions, and Basis Therefor

There is in evidence a "Telehealth SOAP Note" dated 05/18/22 which describes an initial evaluation of Claimant at Baldwin Medical Services (Irfan Alladin, MD). From the contents of the report, it seems this was not a virtual visit notwithstanding the "Telehealth" description at the heading of the report.

Claimant's reported complaints included neck pain that radiated to Claimant's bilateral shoulders, forearms and hands intermittently; and right shoulder pain.

Examination of Claimant's neck revealed tenderness to palpation; bilateral trapezius muscle spasms; restricted ranges of motion (ROM) in all planes; and positive Spurling, Soto Hall, foraminal compression, and axial distraction tests.

Claimant's right shoulder was tender to palpation of the bicipital groove, GH and AC joints, and subacromial process. ROM was restricted, with positive Neer sign, shoulder depression test, apprehension test, Hawkins test, and Empty can test.

The assessment included cervical spondylosis; cervicgia; cervical sprain; cervical strain; shoulder pain; and shoulder impingement. The plan included continued management with physical therapy and medications; and a right cervical MBB and right shoulder intra-articular injection on 06/06/22.

The claim at issue herein is for a facility fee related to the injections administered to Claimant on 06/06/22. Respondent denied the subject claim based on a peer review report by Gary J. Florio, MD.

The "history" section of Dr. Florio's report is a single paragraph that begins, in relevant part: "According to these records, this claimant is a female whose birthday is [redacted] and who presented for evaluation at Integrated Medical Rehabilitation and Diag., P.C. on 06/27/2022 with a history of being involved in a motor vehicle accident on 03/15/2022."

The remainder of the paragraph is a recitation of Claimant's complaints and the reported examination findings.

The examination described and discussed in the peer review report took place *after* the date of service at issue. As noted above, the CMBB and shoulder injections were recommended by Dr. Alladin following his examination of Claimant on 05/18/22 and were administered to Claimant on 06/06/22; Dr. Florio discussed an examination of Claimant by a different provider on 06/27/22 - three (3) weeks after the date of service at issue herein.

For this reason, Dr. Florio's report is insufficient to demonstrate, *prima facie*, that the services at issue herein were not medically necessary.

Submission of a properly completed claim form is all that is required to establish, *prima facie*, that the services at issue were medically necessary. *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co.*, 37 Misc.3d 19, 952 N.Y.S.2d 372 (App. Term 2d, 11th & 13th Dists. 2012).

Respondent must overcome the presumption of medical necessity by submitting competent evidence sufficient to "establish a factual basis and medical rationale for the lack of medical necessity of [Applicant's] services. *Nir v. Allstate*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005).

If Respondent's denial is based on a peer review, A peer review will be found "insufficient if it is unsupported by or controverted by evidence of medical standards" or "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*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005).

As stated above, the peer review report is *insufficient* to establish Respondent's *prima facie* medical necessity defense.

This Award is in full disposition of all claims and issues before me in this proceeding.

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
	Ambulatory Surgical Center of Pompton Lake	06/06/22 - 06/06/22	\$2,823.27	Awarded: \$2,823.27
Total			\$2,823.27	Awarded: \$2,823.27

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/15/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to the Court of Appeals decision in LMK Psychological Services P.C. v. State Farm, 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009), interest is tolled until the filing date where the Applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations" (11 NYCRR 65-3.9[c]).

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e).

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

11/06/2023

(Dated)

Michael Resko

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:
5bc6f7935edac514060dd80d17daeb95

Electronically Signed

Your name: Michael Resko
Signed on: 11/06/2023