

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI OF Queens
(Applicant)

- and -

The Travelers Home And Marine Insurance
Company
(Respondent)

AAA Case No. 17-23-1282-7784

Applicant's File No. 23-000207

Insurer's Claim File No. IPB5496

NAIC No. 38130

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

Jared Mallimo Esq. from The Licatesi Law Group, LLP participated virtually for the Applicant

Paige Williams-Sodoma Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,751.08**, 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 denials of the subject claims were 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 43-year-old male driver injured in a motor vehicle accident on 03/20/22.

Applicant seeks payment of claims for MRI studies of Claimant's lumbar spine and cervical spine performed on date of service 04/20/22; thoracic spine performed on date of service 05/04/22; and left knee performed on date of service 05/05/22.

Respondent denied these claims based on a peer review report by Isandr Dumesh, MD (dated 05/26/22).

Applicant has submitted a rebuttal of the peer review report by John Ventrudo, MD (dated 09/29/23). Respondent objected and asked that I not consider Applicant's rebuttal on "rocket docket" grounds.

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

The MRI studies at issue were ordered by Jean-Pierre Georges Barakat, MD on 03/30/22 following an initial examination of Claimant on 03/29/22. Claimant's relevant complaints were neck pain, lower back pain, mid back pain and left knee pain associated with bruising. Examination of Claimant's cervical spine revealed moderate tenderness at the C1-C2 level; increased muscle tone in paravertebral, trapezius and rhomboid muscles bilaterally; and decreased and painful range of motion (ROM). Examination of Claimant's lumbosacral spine revealed moderate tenderness at the L1-L2 and S1 levels, increased paravertebral muscle tone bilaterally; and decreased and painful ROM. Examination of Claimant's thoracic spine revealed tenderness at the T6-T10 level with spasms of paraspinal structures bilaterally. Examination of Claimant's left knee revealed decreased ROM. Neurological examination was normal.

The working diagnoses were cervicalgia; sprain of joints and ligaments of other parts of neck, initial encounter; low back pain; sprain of unspecified parts of lumbar spine and pelvis, initial encounter; muscle spasm of back; pain in thoracic spine; sprain of other specified parts of thorax, initial encounter; myalgia; and pain in left knee. Claimant was recommended MRIs of the Cervical Spine and Lumbar Spine to rule out any discogenic injury as well as MRI of the Left Knee to rule out ligament tear; physical therapy evaluation and treatment; chiropractic evaluation for adjustment of spinal injury; acupuncturist evaluation for treatment and pain control; and Claimant was prescribed medication and durable medical equipment (DME).

The issue to be decided is whether the MRI studies of Claimant's lumbar spine, cervical spine, thoracic spine, and left knee - or any of them - were 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).

Respondent's medical necessity defense is founded on a peer review report by Dr. Dumesh. Dr. Dumesh discussed the "spinal MRIs" collectively and the left knee MRI study separately. Regarding the former, Dr. Dumesh wrote, in relevant parts:

In regards to the MRIs of the Cervical, Thoracic and Lumbar Spine, the following should be noted. In general, a spinal MRI could be considered in cases of persistent pain in the spine area present for a period of one month or longer despite a standard conservative therapy regimen (such as physical therapy, NSAID medication, and/or chiropractic treatments), and especially when any alternative therapy approach, such as neurosurgical intervention, is being considered. . . .

As per the article: "Appropriate Use of MRI for Evaluating Common Musculoskeletal Conditions" by Donald C. Pompan, MD, FAAOS, Salinas, California. Am Fam Physician. 2011 Apr 15;83(8):883-884, page 1: . . . What are the indications for MRI? For most patients with neck, back, knee, or shoulder pain, a diagnosis can be made with a history, physical examination, and plain film radiography; surgery is not indicated. . . . The indications for and timing of MRI will depend on whether the problem is emergent, acute, or chronic. Musculoskeletal emergencies that require an immediate MRI are limited primarily to spinal conditions such as suspected cauda equina syndrome and infection. There are certain acute neck, back, shoulder, and knee conditions for which MRI should be considered after four to six weeks of conservative care if the findings could alter treatment. In patients who have neck and back pain with persistent radiculopathy or those who have loss of balance and gait problems indicative of cervical myelopathy, MRI can detect disk herniations or spinal stenosis that may benefit from more aggressive treatment."

In this particular case, the claimant sustained musculo-skeletal injuries as a result of the motor vehicle accident. According to the initial evaluation report dated 03/29/22, the claimant was started on a proper and sufficient course of conservative therapy. The claimant was referred for the spinal MRIs following the same initial evaluation. The studies were conducted approximately three weeks later. However, according to the records reviewed, there was no indication that the claimant was failing on the conservative therapy course and any alternative therapy approach or surgical intervention was considered at that time that would depend on the above spinal MRI results. There was no indication that the

above Cervical, Thoracic and Lumbar Spine MRIs could somehow influence the planned therapy course or affect future treatment decisions. Due to all of the above-said, I consider the spinal MRIs not medically necessary.

Dr. Dumesh began his discussion of the MRI study of Claimant's left knee as follows:

In regards to the MRI of the Left Knee, I would like to comment on the following. In general, a knee MRI could be considered in cases of persistent knee pain, where there is a suspicion of serious ligament complex injury.

He then cited two (2) medical articles describing the methodology of clinical knee examinations, but that do not set forth any standard of care for the ordering and performing of MRI studies. Dr. Dumesh concluded:

In this particular case, the claimant was complaining of left knee pain during the initial examination conducted on 03/29/22. However, no findings pointing to possible knee instability or significant ligament damage were present during the physical examination. The physical examination findings in this case did not warrant the necessity of the left knee MRI. The claimant was already started on the proper rehabilitation regimen that was sufficient for the claimant's knee injury. Since no suspicion of the ligament complex damage or knee instability was raised during the physical examination, I do not find the MRI of the Left Knee medically necessary in this case.

Dr. Dumesh's analysis is sufficient to establish Respondent's *prima facie* medical necessity defense as to the MRI studies of Claimant's lumbar spine, cervical spine, and thoracic spine. Dr. Dumesh set forth a standard of care, supported by medical authority, for these services ("*The indications for and timing of MRI will depend on whether the problem is emergent, acute, or chronic. Musculoskeletal emergencies that require an immediate MRI are limited primarily to spinal conditions such as suspected cauda equina syndrome and infection. There are certain acute neck, back, shoulder, and knee conditions for which MRI should be considered after four to six weeks of conservative care if the findings could alter treatment. In patients who have neck and back pain with persistent radiculopathy or those who have loss of balance and gait problems indicative of cervical myelopathy, MRI can detect disk herniations or spinal stenosis that may benefit from more aggressive treatment*"); and demonstrated that the performance of these studies in this case deviated from that standard.

However, his analysis is *insufficient* as to the MRI study of Claimant's left knee. Dr. Dumesh did not set forth a standard of care for this service supported by relevant medical authority.

The burden of proof now shifts to Applicant to rebut Dr. Dumesh's argument that the "spinal MRIs" were not medically necessary. See, *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table), 2007 N.Y.

51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007). "A claimant, aided by the presumption of medical necessity, need not produce a single bit of evidence until the insurer meets its considerable burden under *Nir v. Allstate Ins. Co.*" *Elmont Open MRI & Diagnostic Radiology, P.C. v. State Farm Mutual Automobile Ins. Co.*, 26 Misc.3d 1221(A), 907 N.Y.S.2d 99 (Table), 2010 N.Y. Slip Op. 50202(U) at 1, 2010 WL 457304 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Jan. 27, 2010). However, once and if the Respondent meets its initial burden, "it is ultimately plaintiff who must prove, by a preponderance of the evidence, that the services or supplies were medically necessary." *Park Slope Medical, supra*.

Applicant does not need a formal "rebuttal" in the form of an affidavit or other statement specifically created in response to the peer review report; Applicant may rely on the existing medical records and reports already in evidence to counter Respondent's defense and demonstrate medical necessity for the disputed services.

Applicant did submit a rebuttal in this case, by Dr. Ventrudo, who did not examine or treat Claimant and did not refer Claimant for the MRI studies in question. I considered Dr. Ventrudo's rebuttal over Respondent's "rocket docket" objection and ultimately found it unpersuasive. Dr. Ventrudo stated, in relevant part, that the initial examination report "did reflect significant findings including neurological abnormalities and orthopedic deficits". This statement is simply not consistent with the report, which documented a normal neurological examination and no "positive" orthopedic tests or signs.

Based on the evidence before me, I find the MRI study of Claimant's left knee was medically necessary, and the MRI studies of Claimant's lumbar spine, cervical spine, and thoracic spine were not medically necessary.

Applicant is awarded **\$966.54**. The balance of the claims is denied. This Award is in complete disposition of all claims and issues before me in this case.

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
	Stand Up MRI OF Queens	04/20/22 - 04/20/22	\$1,003.20	Denied
	Stand Up MRI OF Queens	04/20/22 - 05/05/22	\$2,747.88	Awarded: \$966.54
Total			\$3,751.08	Awarded: \$966.54

B. The insurer shall also compute and pay the applicant interest set forth below. 01/16/2023 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.

11/08/2023

(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:
172fa37b618deabdf8e2fc84014cbe9c

Electronically Signed

Your name: Michael Resko
Signed on: 11/08/2023