

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Aztec Medical, PA
(Applicant)

- and -

Travelers Property Casualty Insurance
Company
(Respondent)

AAA Case No. 17-23-1281-6329

Applicant's File No. RB-156-321562

Insurer's Claim File No. IEI4589

NAIC No. 38130

ARBITRATION AWARD

I, Karen Fisher-Isaacs, 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 10/31/2023
Declared closed by the arbitrator on 10/31/2023

Alex Samaroo from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Shana Kleinman from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$356.52**, 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

Applicant seeks reimbursement of charges for its Physician Assistant's billing associated with a cervical epidural steroid injection performed on May 7, 2022 (\$178.26 in dispute) and bilateral sacroiliac joint steroid block injections (\$178.26 in dispute) performed on June 18, 2021 for Assignor, a 45-year old female, in connection with treating injuries following a January 30, 2020 motor vehicle accident. Respondent timely denied Applicant's claim based on Dr. Samy Dean's February 22, 2021 pain management IME.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amount of \$356.52, its PA's billing associated with injections performed on May 7 and June 18, 2021 for Assignor, a 45-year old male, in connection with treating injuries sustained in a motor vehicle accident on January 30, 2020. Respondent timely denied Applicant's claim based on an IME report.

As a threshold matter, I find that Applicant has established its prima facie case as Applicant has met the requirements enunciated in *Ave T MPC Corp. v Auto One Ins. Co.*, 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists 2011]). To meet its burden and establish a lack of medical necessity, Respondent must present competent medical evidence setting forth a clear factual basis (specifics of the claim) and medical rationale for denying the claim. *Citywide Social Work and Psych Services, PLLC v. Allstate*, 8 Misc. 3d 1025A (2005); *Healing Hands Chiropractic v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (2004).

Assignor was the driver of a motor vehicle that was involved in an accident on January 30, 2020. She was evaluated at City MD Urgent Care and referred for outpatient care. She presented to Metro Pain on February 4, 2020 for an initial evaluation. Assignor's complaints included neck, bilateral shoulder, right knee, mid back, lower back, right ankle and right hip pain. Assignor was referred for physical therapy, chiropractic treatment, acupuncture, MRIs, prescription medication, medical supplies and injection therapy.

Respondent's evidence established that it timely denied Applicant's billing based on Dr. Dean's February 22, 2021 IME. Dr. Dean noted that Assignor complained of neck, lower back and right shoulder pain at the time of the IME. Cervical and lumbar range of motion testing was normal. Cervical/lumbar spine facet loading was negative bilaterally. While tenderness was noted over the right iliac crest there was no muscle spasm or guarding. Straight leg raise testing and cervical compression were both negative bilaterally. The neurological exam was unremarkable. Due to the lack of any objective findings, Dr. Dean diagnosed resolved cervical/lumbar spine sprains/strains. He advised that Assignor had

reached an end result in anesthesiology/pain management treatment and that further anesthesiology/pain management treatment was not medically necessary.

The law is well settled that the burden is on the insurer to prove that medical treatment performed was not medically necessary. (See *A.B. Medical Services PLLC v. Geico Insurance*, 2 Misc.3d 26, 773 N.Y.S.2d 773 [App. Term, 2nd & 11th Jud. Dists. 2003]; *King's Medical Supply Inc. v. Country-Wide Insurance Company*, 783 N.Y.S.2d at 448). I find Dr. Dean's IME report evidencing a thorough exam sufficient to meet this burden.

Once Respondent, through Dr. Dean's report, established the merits of its challenges to the medical necessity of the May 7, 2021 CESI and June 18, 2021 and June 18, 2021 sacroiliac joint injections, the burden shifted. Now, Applicant was bound to present competent medical proof establishing the medical necessity for the post IME CESI and bilateral sacroiliac joint injections, and to do so by a preponderance of the credible evidence. *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08). Ultimately, the burden rests with Applicant.

As a threshold matter, Respondent's attorney argued that the doctrine of collateral estoppel mandates an award in Respondent's favor. She relied on my linked Arbitration Awards in AAA Case No. 17-21-1211-1241 and AAA Case No 17-23-1289-5272 dated 9/7/22 and 9/28/23 respectively in which I found that the IME Report of Dr. Dean was sufficient to establish that further pain management treatment was not medically necessary. In both cases I sustained Respondent's denials because there were no contemporaneous reports and therefore no basis on which to dispute Respondent's defense.

The doctrine of collateral estoppel mandates that a party against whom there has been a dispositive finding may not reassert an issue that has been determined in a prior arbitration, whether or not the tribunals or causes of action are the same. [See, *Ryan v. New York Telephone*, 62 N.Y.2d 494, 478 N.Y.S.2d 823, 467 N.E.2d 487 (1984).] In order to invoke this doctrine, the following criteria must be met: the issue must be identical to that which was previously litigated; it must be decisive of the instant action; and it requires that the parties had a full and fair opportunity to contest the decision. [See, *Gilberg v. Barbieri*, 53 N.Y.2d 285, 441 N.Y.S.2d 49 (1981).]

Applicant's counsel argued that collateral estoppel does not apply because this Applicant was not a party to the previous arbitrations and did not have a full and fair opportunity to arbitrate the issue of the sufficiency of Respondent's IME. I agree that Applicant is entitled to present evidence to contest Dr. Dean's IME

report since it was not a party to the prior proceedings when this issue was addressed.

While in the two earlier matters, no contemporaneous medical evidence was submitted, this Applicant submitted sufficient contemporaneous medical evidence to refute Dr. Dean's determination that Assignor's accident related injuries had resolved as of the IME date. In the earlier cases, I noted that there was a gap in treatment between October 22, 2020 and April 8, 2021. Here, Applicant submitted Metro Pain's January 11, 2021 examination report indicated deficits in Assignor's cervical range of motion testing with tenderness and trigger points, diminished strength and sensation and positive orthopedic testing (Spurling's test-positive on the right and left, Cervical Distraction -positive) and the lumbar exam revealed severe tenderness, tender trigger points, diminished strength and sensation with a positive SLR, positive Trendelenburg, positive Dura Tension, positive Fabere and positive Patrick tests. Additionally, Applicant submitted a March 5, 2021 examination report indicating subjective (neck stiffness and tenderness, lower back stiffness with tenderness and numbness) and objective findings (decreased range of motion testing in cervical and lumbar spine) with decreased sensation and positive orthopedic testing. Metro Pain's March 16, 2021 report was replete with positive findings. For example, the examination of Assignor's right knee revealed tenderness, crepitus and a positive McMurray's test and the examination of Assignor's right shoulder indicated positive Empty Can and Hawkins tests.

As this Applicant submitted sufficient contemporaneous medical evidence to refute Dr. Dean's IME report, Applicant is now awarded \$356.52 in total satisfaction of its claim.

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
	Aztec Medical, PA	05/07/21 - 05/07/21	\$178.26	Awarded: \$178.26
	Aztec Medical, PA	06/18/21 - 06/18/21	\$178.26	Awarded: \$178.26
Total			\$356.52	Awarded: \$356.52

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/06/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant the amount of interest computed from the date of filing (noted above) of the AR-1, at a rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR 65-3.9(e).

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, subject to a maximum fee of \$1,360.00, in accordance with 11 NYCRR 65-4.6(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 NJ
SS :
County of Bergen

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

11/10/2023
(Dated)

Karen Fisher-Isaacs

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:
ddfe5834be5be9d02a4f168219dd7c3f

Electronically Signed

Your name: Karen Fisher-Isaacs
Signed on: 11/10/2023