American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kpaul Nurse Practitioner Adult Health Wellness PLLC (Applicant)	AAA Case No.	17-22-1265-4286
	Applicant's File No.	118212
	Insurer's Claim File No.	675856
- and -	NAIC No.	Self-Insured
MVAIC (Respondent)		

ARBITRATION AWARD

I, Diane Flood Taylor, 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 11/13/2023
   Declared closed by the arbitrator on 11/13/2023

   Aleksey Selipanov from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

   Tracy Bader Pollack from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$2,275.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount in dispute was amended to $131.05 in consideration of the fee schedule.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether the Applicant is entitled to recover for dry needling, which the Respondent has denied as medically unnecessary predicated upon a peer review.

Applicant is seeking reimbursement in the amended amount of $131.05 for dry needling in connection with the management of injuries sustained by the Assignor, MR, a then 22-year-old eligible injured person who, on 4/9/22, was a bicyclist struck by the insured motor vehicle.

Respondent denied reimbursement for the dry needling by a nurse practitioner premised on a peer review conducted by Harry E. Jackson, MD, dated 8/19/22.

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

4. Findings, Conclusions, and Basis Therefor

In dispute in this Arbitration is a bill for dry needling performed on 7/13/22.

Respondent raised no issue or argument concerning Applicant's submission of proof of claim.

Applicant establishes its prima facie entitlement to reimbursement with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. See Insurance Law § 5106(a); Viviane Etienne Med. Care v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

The burden shifts to the Respondent to demonstrate a lack of medical necessity for the disputed services. See, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc 3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. See, Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co., 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); King's Med. Supply Inc. v. Country Wide Ins. Co., 5 Misc 3d 767, 783 N.Y.S. 2d 448. The medical rationale should be supported by evidence of the generally accepted medical professional practice. See, Nir v. Allstate Ins. Co., 7 Misc. 3d 544 (2005).

Peer Review

Respondent timely denied reimbursement for the services at issue premised upon a peer review conducted on its behalf by Harry E. Jackson, MD, who wrote in a report dated 8/19/22 in support of the recommendation against reimbursement, "the submitted records show that the claimant had a soft tissue injury, standard of care is physical therapy and analgesics. Dry needling, as well as any future needling and supplies used, are not medically indicated, this treatment is palliative and not therapeutic."

Dr. Jackson emphasized, "this procedure does not improve functional outcomes when compared to other conservative treatments and thus was not medically necessary or part of a standard of care."

The above referenced peer review sets forth a factual basis and medical rationale in support of Respondent's denial based on a lack of medical necessity for the disputed procedure. If the insurer presents sufficient evidence establishing a lack of medical necessity, then the burden shifts back to the Applicant to present its own evidence of medical necessity. See, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131A (2006). In order for the Applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the Respondent's evidence. See, Yklik, Inc. v. Geico Ins. Co., 28 Misc. 3d 133A (2010).

Applicant's Evidence

Applicant submitted a medical report for the date of this treatment, 7/13/22, which reflects complaints of pain in the neck, back, bilateral shoulders, and bilateral knees. Pain scale was 6/10. It is noted that this examination was over three (3) months post-accident for this 22-year-old bicyclist struck by the insured motor vehicle. The provider noted decreased cervical and lumbar spine, bilateral shoulders and bilateral knees range of motion and increased pain on examination. Clinical impression was radiculopathy and musculoskeletal disorder.

No formal rebuttal was submitted on behalf of Applicant.

Pursuant to 11 NYCRR 65-4.5 (o) (Regulation 68-D) the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. See Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

"Although an arbitration panel may not overtly disregard the law, arbitrators are not strictly tethered to substantive and procedural laws and may do justice as

they see it, provided that they do not violate a strong public policy, do not exceed a specifically enumerated limitation on their power and their decisions are not totally irrational [citations omitted]." Matter of Solow Building Co., LLC v. Morgan Guarantee Trust Co. of New York, 6 A.D.3d 356, 356, 776 N.Y.S.2d 547, 548 (1st Dept. 2004).

Findings

In careful consideration of the credible evidence submitted, and in weighing the opinion of the doctor as expressed in the peer review of Dr. Jackson and the medical evidence submitted by Applicant, I find Dr. Jackson's arguments less persuasive and it is noted that he admitted that this treatment is palliative.

Premised on the objective clinical evidence in the record, I find Applicant proved the medical necessity for the dry needling by a preponderance of the evidence.

Inasmuch as Respondent submitted non-case specific fee evidence which included evidence in support of Applicant's amended amount, I find for Applicant in the amount of $131.05.

Accordingly, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Applicant as delineated above. Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No- Fault benefits presently before this Arbitrator.

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	Amount Amended	Status
	Kpaul Nurse Practitioner Adult Health Wellness PLLC	**07/13/22 - 07/13/22**	**$2,275.00**	**$131.05**	**Awarded: $131.05**
Total			**$2,275.00**		**Awarded: $131.05**

B. The insurer shall also compute and pay the applicant interest set forth below. 09/07/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the initiation date for this case until the date that payment is made at two percent (2%) per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee equal to twenty percent (20%) of the total amount of first-party benefits awarded, plus interest thereon, as provided for in 11 NYCRR 65-4.6(d), subject to a maximum fee of $1,360.00.

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

11/13/2023
(Dated)

Diane Flood Taylor

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:
e281a2b4fbfd03a231e02e58d1fe24ca

Electronically Signed

Your name: Diane Flood Taylor
Signed on: 11/13/2023