

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Zwanger-Pesiri Radiology Group LLP
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1289-4865

Applicant's File No. CF13023552

Insurer's Claim File No. 0527407480 2N1

NAIC No. 19232

ARBITRATION AWARD

I, Tracy Morgan, 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: injured person-assignor

1. Hearing(s) held on 10/20/2023
Declared closed by the arbitrator on 10/20/2023

Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated virtually for the Applicant

David Kelly, Esq. from Law Offices of James F. Sullivan, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$967.70**, 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

The Applicant is the assignee of no-fault benefits from injured person-assignor (LR), a 46 year old female who reported she was involved in a motor vehicle accident as a driver on December 10, 2018. Following the accident, the injured person-assignor sought medical treatment and underwent a cervical MRI on December 29, 2022 performed by Applicant. Respondent denied Applicant's claim for reimbursement contending a lack of medical necessity based upon a peer review report by Peter Zahos, M.D. dated February 7, 2023.

The issue presented on this arbitration is whether the MRI in dispute was medically necessary?

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in ADR Center. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed the relevant exhibits contained in the electronic file maintained by the American Arbitration Association and have considered all of the stipulations and arguments presented by both parties at the hearing of this matter. No witnesses appeared or testified.

I find that Applicant established its prima facie entitlement to No-fault benefits as proof of claim was mailed to and received by the insurer and payment of No-Fault benefits is overdue See Insurance Law § 5106 [a]; 11 NYCRR 65.15 [g]; *Viviane Etienne Medical Care, P.C. v Country-Wide Ins. Co.*, 25 NY3d 498 (2015).

Respondent denied Applicant's claim contending that the services at issue were not medically necessary based upon the peer review report by Peter Zahos, M.D. dated February 7, 2023.

Where a health care provider establishes its prima facie entitlement to no-fault benefits, the burden shifts to the insurer to prove that the medical services were not medically necessary *Nir v Allstate Ins. Co.*, 7 Misc. 3d 544 (2005); *Amaze Medical Supply Inc. v Eagle Insurance Co.*, 2 Misc3d 128(A), 2003 NY Slip Op. 51701(U)(App Term 2d, 11 & 13 Dists.). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established, shifts the burden of persuasion to applicant See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App Term 1st Dept. 2006).

In support of its contention that the MRI was not medically necessary, Respondent relies upon the peer review report of Peter Zahos, M.D. who concluded that the MRI was not medically necessary because there were no findings to indicate a concern for neurological deficits. Examinations during the months leading up to the MRI demonstrated no focal motor deficits and symmetrical reflexes. The examination of November 11, 2022 documented complaints of dull neck pain without radicular symptoms, no reports of weakness or numbness, no balance disturbance and no motor deficits. There was no suggestion of nerve root compression necessitating the MRI. The

standard of care for an MRI is complex cervical radiculopathy, neurological deficits, myelopathy, progression or worsening of symptoms, abnormality on EMG or following acute trauma.

Respondent has factually demonstrated the services rendered were not medically necessary. Since the peer review established prima facie, that the MRI study was not medically necessary, the burden shifted to Applicant to demonstrate by a preponderance of the credible evidence that the MRI was medically necessary.

Applicant did not submit a formal rebuttal. Applicant relied upon medical reports in the Record including examination notes from 2019-2022 demonstrating complaints of neck pain and positive findings including a lesion on the brain. In his report of November 22, 2022 Dr. Palumbo recommended therapy and a cervical MRI.

Upon review of the evidence on this Record, it is significant to note that the instant MRI was ordered over 4 years after the instant accident. A cervical MRI was previously performed January 5, 2019 revealing multiple cervical herniations. Following the initial MRI, the injured person-assignor had neck pain but the focus of the evaluations submitted on this Record was for an intracranial lesion and intracerebral mass that was found. The records demonstrate that motor, sensation and reflex assessment were normal and pointed out that these cerebral findings were not associated with her neck pain symptomology. Rather, the discomfort she reported was musculoligamentous in nature. Records up to May 19, 2020 indicate that repeat brain imaging was recommended for monitoring purposes. The next medical report in evidence is dated September 8, 2022, over 2 years later, which revealed complaints of headaches and neck pain. There were no focal motor deficits and normal reflexes. She was referred to a headache specialist and given muscle relaxants. Dr. Palumbo noted that there was no surgical intervention being considered. Then on November 22, 2022 she appeared for follow up and the complaints were of non-radiating neck pain and the findings were as described by the peer reviewer. The records support Dr. Zahos' impression of a lack of neurological deficits and as such, the weight of the credible evidence supports Respondent's position. I find that Applicant failed to rebut the peer reviewer's conclusion and accordingly, the claim is denied. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Nassau

I, Tracy Morgan, 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)

Tracy Morgan

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:
cb2de3020516ebba666177d8225feaa1

Electronically Signed

Your name: Tracy Morgan
Signed on: 11/13/2023