

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Spinal Pain & Rehab Medical PC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-23-1285-8363

Applicant's File No. N/A

Insurer's Claim File No. 52-31W7-63B

NAIC No. 25178

ARBITRATION AWARD

I, Victor Moritz, 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: IP

1. Hearing(s) held on 11/16/2023
Declared closed by the arbitrator on 11/16/2023

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Union City)
participated virtually for the Applicant

Anil Singh, Esq. from James F. Butler & Associates participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$542.14**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended their claim to \$421.92, reflecting the proper amount at issue per the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount at issue.

3. Summary of Issues in Dispute

The applicant seeks reimbursement for the cost of physical therapy services provided to the IP (S.L.J. 54 year old male) from November 7-17, 2022, relative to a March 12, 2022 motor vehicle accident. The respondent denied this claim based on a lack of medical necessity, per the result of an Independent Medical Evaluation (IME) by Dr. Cyrus Kao, on July 14, 2022, effective August 31, 2022. The applicant has provided a rebuttal by Dr. Leonid Shapiro. The parties have also stipulated to the fee schedule amount at issue. This matter is determined after reviewing the submissions and presentations of both sides. I have reviewed the documents contained in the electronic case folder as of the closing of the file. The hearing was held on Zoom.

4. Findings, Conclusions, and Basis Therefor

I find for the applicant and award the sum of \$421.92 for the cost of the services at issue.

IME

The respondent's denial was based on the IME by Dr. Kao, who noted the history of the IP's motor vehicle accident. As a result, he sustained injuries to his neck, middle and lower back, as well as his left upper and lower extremities. After emergency room treatment, he began conservative care, which included acupuncture and chiropractic physical and massage therapy. At the time of this evaluation, the patient was complaining of pain through the spinal regions and the left upper and lower extremities.

The neurological evaluation, through the upper and lower extremities, was intact. The evaluation of the cervical spine revealed full range of motion in all planes without evidence of tenderness, spasms, swelling, or crepitus. The orthopedic test results were negative. The evaluation of the thoracic spine revealed full range of motion without tenderness or spasms. The evaluation of the lumbar spine revealed full range of motion except for the limitation on flexion. There was tenderness on touch; however, no spasms were present. The Straight Leg Raise test was negative bilaterally. The evaluation of the shoulders revealed full range of motion in all planes with negative orthopedic test results. The wrist, hands, and elbows evaluation also revealed no deficits. Concerning the lower extremities, the evaluation of the hips revealed full range of motion on all planes, without tenderness, and negative orthopedic test results. The evaluation of knees also revealed full range of motion with negative orthopedic tests. The evaluation of the ankles and feet also revealed no deficits.

Dr. Kao reviewed various imaging studies and medical records and his findings concluded resolved cervical, thoracic and lumbar spine strains; left shoulder, wrist, and hand, as well as hip, knee, and ankle strains, and left foot strain. Dr. Kao stated there were no objective findings despite subjective complaints of pain. While there was some tenderness in the lumbar region with limited range of motion, there was no evidence of any radiculopathy or any basis for further care, including physical therapy.

Applicant's Submissions & Rebuttal

To refute these findings, the applicant has submitted treatment notes for the date of service at issue and the rebuttal from Dr. Shapiro that summarized the IP's medical findings and treatment.

The IP was in an accident on March 12, 2022 sustaining multiple injuries, including injuries to his neck, middle back, lower back, left shoulder and left knee. After initial emergency room treatment, he began a course of conservative treatment, including physical and massage therapy, acupuncture and chiropractic treatments. Initial medical findings revealed sharp and constant radiating neck and lower back pain that was exacerbated with movement. Range of motion was decreased through the spinal region with tenderness and spasms. The neurological examination revealed decreased muscle strength. The initial impression included cervicalgia, lower back pain and lumbago with sciatica.

An April 7, 2022 examination by Prashant Latpate, DPT, under the supervision of Dr. Binod Prasad Shah, found complaints of neck pain with stiffness radiating to the bilateral upper extremities with paresthesia and numbness sensation and lower back pain radiating to left lower extremities associated with paresthesia and numbness sensation. Further, there was left shoulder and left knee pain. All pain was aggravated by movement and impacting on daily living activities. The examination of the cervical spine revealed decreased range of motion in all the planes with pain, tenderness at the spinous process and paraspinal muscles, muscle spasm, palpable trigger points in the cervical and scapular muscles, positive Hyper flexion Complexion test, and positive Hyper extension Compression test. The thoracic spine examination revealed hypertonicity and trigger points at the middle and lower trapezius muscle bilaterally and thoracic erector spinae and the thoracic paraspinal muscle bilaterally. The examination of the lumbar spine revealed decreased range of motion in all the planes with pain, tenderness at the spinous process, paraspinal muscles, left sciatic notch, and trochanteric area, muscle spasm, and positive Facet Loading test bilaterally. The examination of the left shoulder revealed decreased range of motion in all the planes with pain, and tenderness at the left AC joint, trapezius, deltoid, anterior, posterior and tuberosity, positive Impingement test on the left and positive Neer's test on the left. The examination of the left knee revealed decreased range of motion at flexion, tenderness at the anterior knee and lateral joint line, a positive Varus Stress test on the left and a positive Valgus Stress test on the left. Based on the patient's complaints and findings upon evaluation, the patient was diagnosed with cervicalgia, cervico-thoracic region radiculopathy, other cervical disc displacements of unspecified cervical region, lower back pain, lumbosacral region radiculopathy, spondylosis without myelopathy or radiculopathy of lumbosacral region, myalgia, incomplete rotator cuff tear or ruptured of left shoulder and incomplete rotator cuff tear or ruptured of left knee. The IP was recommended to continue physical therapy and chiropractic treatment that continued through the dates of service.

Treatment notes in August and September 2022 revealed continued complaints of sharp neck pain with radiation and sharp and constant lower back pain with radiation, all aggravated by movement. The IP continued to experience problems with daily living

activities. The cervical spine examination revealed severe tenderness and muscle spasms on the cervical paraspinal and upper trapezius muscles bilaterally. The thoracic spine examination revealed severe tenderness and muscle spasms at the thoracic paraspinal and upper trapezius muscles bilaterally. The lumbar spine examination revealed decreased active and passive range of motion at flexion and extension, severe tenderness and muscle spasm on lumbar paraspinal muscles bilaterally. The neurological examination revealed decreased muscle strength. The impression remained the same and continued treatment was provided.

A reevaluation on October 4, 2022 did reveal some improvements; however, decreased range of motion with pain and spasms were noted with positive orthopedic findings and reduced motor strength. Continued treatment was recommended.

Physical therapy treatment notes through October and November continued to reveal orthopedic and neurological spinal deficits with tenderness and spasms and continued therapy being provided.

Dr. Shapiro also discusses Dr. Kao's IME, noting the IP was still complaining of pain through the lower back and the left extremities. Taking the medical records from the treating provider, where the IP continued to complain of pain with positive findings noted, including tenderness and spasms with positive orthopedic findings with reduced motor strength. Given these findings, Dr. Kao incorrectly labeled the patient's condition as resolved.

The rebuttal then discusses the underlying benefits of physical therapy. Dr. Shapiro concludes that taking the medical evaluations of the IP that postdate Dr. Kao's examination and Dr. Kao's limited findings, it was appropriate to continue treatment, and the IME's physician's determination to render the patient's condition resolved was incorrect and continued care was medically necessary.

Legal Standards for Determining Medical Necessity

It is well settled that an applicant established its prima facie entitlement to payment by proving it submitted a claim set forth the facts and the amount of the loss sustained and that payment of no-fault benefits were overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Countrywide Ins. Co. v. 563 Grand Medical PC 50 A.D. 3d. 313 (1st Dep't, 2008); Sunshine Imaging Assoc./WNY MRI v. Geico. Ins. Co., 66 A.D. 3d. 1419 (4th Dep't, 2009). A facially valid claim is presented when it sets forth the name of the patient; date of accident; date of the services; description of services rendered and the charges for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1st Dist. Ct. Nass. Co.1996). The applicant has met this burden.

When evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment Kingsborough Jewish Med. Ctr. v. Allstate Ins. Co. 61 A.D. 3d. 13 (2d. Dep't, 2009), See also Channel Chiropractic PC v. Country Wide Ins. Co. 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co. 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008). In evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002), as the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994); Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 4(App. Term 2d & 11th Dists. Sept. 29, 2006). The case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts. Moreover, the Appellate Term, 2d, 11th & 13th Dists., recently stated: "Assuming the insurer is successful in satisfying its 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 and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 (App. Term 2d, 11th & 13th Dists. 2012).

Application of Legal Standards

I note the validity of denials based upon negative IME findings have been recognized by several Courts. See, e.g., Innovative Chiropractics P.C. v. Mercury Ins. Co., 25 Misc3d 137 (App. Term 2d & 11th Dists. 2009); B.Y. M.D., P.C. v. Progressive Casualty Ins. Co., 26 Misc3d 125 (App. Term 9th & 10th Dists. 2010). An IME report can be the basis of a termination of benefits if ultimately found to be persuasive. Whether an IME report is persuasive, and meets the carrier's burden is a factual decision, which must be rendered on a case-by-case basis.

Therefore, when an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for the claim's rejection, the presumption of medical necessity and causality attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute

the IME findings and prove the necessity of the disputed services and the causal relationship between the injuries and the accident. See, CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 87 (App. Term 1st Dept.); Eden Med., P.C. v. Progressive Cas. Ins. Co., 19 Misc.3d 143(A) (App Term 2d & 11th Jud.Dists., 2008). Be Well Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 18 Misc. 3d. 139 (A) (App. Term 2d Dept., Feb. 21, 2008; A.Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc. 3d. 131 (A) (App Term 2d Dept.); West Tremont Med. Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d. 131 (A) (App Term 2d Dept., 2006).

In the instant matter, I find for the applicant and award reimbursement for the physical therapy services at issue.

Dr. Kao provides a comprehensive IME; however, while he assesses the IP's condition as resolved, he acknowledges the IP's continued complaints of pain through the spinal regions and the knee. Given that the treatment records are contemporaneous to the IME and the later evaluations that provide positive orthopedic and neurological findings through the spinal region and extremities, I find the provider's records sufficient to refute the determination that the IP's condition had resolved.

Accordingly, the applicant is awarded the sum of \$421.92.

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
	Spinal Pain & Rehab Medical PC	11/07/22 - 11/07/22	\$148.37	\$140.64	Awarded: \$140.64
	Spinal Pain & Rehab Medical PC	11/10/22 - 11/10/22	\$148.37	\$140.64	Awarded: \$140.64
	Spinal Pain & Rehab Medical PC	11/14/22 - 11/17/22	\$245.40	\$140.64	Awarded: \$140.64
Total			\$542.14		Awarded: \$421.92

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/08/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay interest at a rate of two percent per month, simple on a pro rata basis using a thirty day month. With respect to the claim herein, interest will run from February 8, 2023, the date of the filing of this claim, through payment of the claim.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with promulgated 11 NYCRR 65-4.6(d).

With respect to this claim, the applicant is entitled to attorney's fees for the medical services provided to the IP for which the applicant is awarded the sum of \$421.92.

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

11/21/2023

(Dated)

Victor Moritz

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:
281a6dda7ab15cd8dff4b5b317336b3

Electronically Signed

Your name: Victor Moritz
Signed on: 11/21/2023