

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ridgewood Diagnostic Laboratory
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1291-5222
Applicant's File No. NF-427391-600336
Insurer's Claim File No. 06294472102NU
NAIC No. 29688

ARBITRATION AWARD

I, Joshua Adler, 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: EIP

1. Hearing(s) held on 11/07/2023
Declared closed by the arbitrator on 11/07/2023

S. Neurwirth from Sanders Grossman Aronova PLLC participated virtually for the Applicant

K. Stulgatis from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,550.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

Acknowledging the respondent's fee analysis by a certified fee coder, applicant amends its claim to \$79.66.

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

3. Summary of Issues in Dispute

The EIP claimed injuries arising from a 6/04/21 MVA.

Applicant-laboratory seeks payment for drug screening/testing performed on 10/10/21.

Respondent denied the claim based on a peer review dated 11/09/211 by Jason Cohen, MD.

4. Findings, Conclusions, and Basis Therefor

EIP: female, born March 1997, initials B.G.

I have reviewed the MODRIA file maintained by the AAA. The findings set forth below are based on documents in MODRIA and arguments made at the hearing.

The EIP claimed injuries arising from a 6/04/21 MVA.

Applicant-laboratory seeks payment for drug screening/testing performed on 10/10/21.

Respondent denied the claim based on a peer review dated 11/09/211 by Jason Cohen, MD.

In opposition, applicant relies on the medical record as well as a rebuttal by Vladimir Gressel, MD, dated 9/20/23.

At the threshold, I note the services rendered are presumptively medically necessary, as the applicant established its *prima facie* entitlement to payment by submitting the claim, setting forth the fact and the amount of loss sustained, and showing that payment was overdue (see e.g., Mary Immaculate Hospital v Allstate Insurance Co., 5 AD3d 742 [2d Dept. 2004]). Indeed, in no-fault matters, "medical necessity is established in the first instance by proof of submission of the claim form" (All County Open MRI v Travelers Insurance Co., 11 Misc3d 131 [A], 815 NYS2d 493 [App. Term 2006]). Turning to the peer review, I find it insufficient to overcome the presumption of medical necessity, as discussed below.

Citing to a 2010 entry in "American Family Physician," the peer reviewer asserted that criteria for drug screening "include those taking a controlled substance for a long period of time (new patients), refusing to grant permission to obtain old records or communicate with previous physicians,

demonstrating a reluctance to undergo a comprehensive history, physical examination, or diagnostic testing (especially urine drug screening), requesting a specific drug (often because of the higher resale value of a brand name), professing multiple allergies to recommended medications, resisting other treatment options, other aberrant behavior" (peer at 2-3) (parentheses in original). The peer reviewer opined that performing the screening on EIP "may deviate from the standard protocol utilized in that there is no documentation or evidence ... of the claimant taking any controlled substances, a plan for prescription of controlled substances, refusing to grant permission for obtaining records or other aberrant behavior" (peer at 3).

I find that the rebuttal addressed the peer reviewer's arguments and persuaded that the treating physician's decision to proceed with the subject drug testing did not deviate from a generally accepted standard of care. Indeed, the rebuttal made the case that the criteria for drug testing are broader than the limited criteria articulated in the peer review, including testing as a general screening and monitoring tool and, moreover, that the screening in this specific case was related to this EIP's particular treatment plan (rebuttal at pages 3-5).

On this record, I perceive, at most, a mere difference of opinion regarding the need for subject drug testing, rather than a demonstration that the treating physician's decision to perform the testing deviated from any generally accepted standard. The presumption of medical necessity which attached with transmission of the invoice, stands.

Accordingly, I find for the applicant.

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
	Ridgewood Diagnostic Laboratory	10/10/21 - 10/10/21	\$5,550.00	\$79.66	Awarded: \$79.66
Total			\$5,550.00		Awarded: \$79.66

B. The insurer shall also compute and pay the applicant interest set forth below. 03/21/2023 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 interest computed from 3/21/23, the date on which the AR-1 was first received by the American Arbitration Association, at a rate of 2% per month, simple, and ending with the date of the payment of the award, subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

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

This matter was filed with the AAA after February 4, 2015. Thus, the insurer shall pay the applicant an attorney's fee 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 NY
SS :
County of Nassau

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

11/24/2023
(Dated)

Joshua Adler

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:
cf3e30a68fa31b06e7c4eb748f87323a

Electronically Signed

Your name: Joshua Adler
Signed on: 11/24/2023