

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Damadian MRI In Canarsie P.C.
(Applicant)

- and -

St. Paul Travelers Insurance Co.
(Respondent)

AAA Case No. 17-23-1291-2471

Applicant's File No. TingleG

Insurer's Claim File No. IIK9533

NAIC No. 36145

ARBITRATION AWARD

I, Gerry Wendrovsky, 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 11/22/2023
Declared closed by the arbitrator on 11/22/2023

Michael Tomforde from Dash Law Firm, P.C. participated virtually for the Applicant

Amber Brogdon Johnson from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,728.97**, 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 EIP, GT, a 69-year-old female was involved in a motor vehicle accident on 2/11/22. At issue is \$1,728.97 for magnetic resonance imaging (MRIs) performed on 4/23/22. Respondent denied the claim based upon the peer review of Dr. John Russo, dated 5/31/22. The question presented is whether the services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case has been decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. The hearing was conducted via Zoom. There were no witnesses. I have reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. This decision is in full disposition of the issues before me.

An applicant establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742 (2nd Dept., 2004). The applicant has submitted sufficient credible evidence to establish its prima facie case.

Peer Review

A defense that an MRI was not medically necessary may properly be established with a peer review [Jacob Nir, as assignee of John Doe and Allstate, 7 Misc. 3d 544, 547 (Civ. Ct. 2005)], which must "*set forth a factual basis and medical rationale for the peer reviewer's determination*" *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2014). A peer review's medical rationale will be insufficient to meet respondent's burden of proof if: 1) not supported by evidence of a deviation from "*generally accepted medical*" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice for its findings; or 3) it fails to provide specifics as to the claim at issue, is conclusory or vague. *All Boro Psychological Servs. P.C. v. GEICO*, 2012 NY Slip Op 50137(U) (Civ. Ct. 2012); Nir, *supra*.

For brevity and readability, references to the medical literature are stated as [*Cite*].

Contending the MRIs (cervical/lumbar spine) were not medically necessary, respondent relied upon the peer review of Dr. Russo, a chiropractor, who reported reviewing the EIP's medical records, and stated in pertinent part:

".... (the EIP) went to Brookdale Hospital on 2/12/22 where she was examined, imaged in the cervical spine, and released. The (EIP) went to a massage therapist, a physical therapist, and a chiropractor shortly after the accident. The (EIP) went to chiropractor, Dr. Burg on 4/5/22 The (EIP)'s complaints in both the ER and throughout her physical therapy consisted only of bilateral neck pain whereas Dr. Burg and the massage therapist indicate a lower back component to the (EIP)'s complaints. Dr. Burg also failed to perform an initial and follow-up examination prior to prescribing the MRI studies. He did not perform a neurological and orthopedic examination which would have been part of the initial and follow-up evaluation process violating standards of care. However, he still made recommendations to start chiropractic care with no duration noted"

Dr. Russo then opined the testing was not medically necessary in pertinent part:

".... There were no clear goals of prescribing these MRI studies 18 days after starting chiropractic care in a case that had no initial or follow-up examinations and had poor signs of improvement before and after these studies were performed. There were no supporting medical reasons for prescribing these MRIs for a diagnosis of cervical and lumbar strain/sprain with no initial examination or follow-up by Dr. Burg with no red flags or diagnostic dilemma. The MRI prescription was not within standards of care. A diagnosis was made, and a treatment program started without MRI studies which should have occurred for 4-6 weeks in the absence of any MRI studies and referred to a board certified pain management physician and possibly even a discontinuation of spinal manipulation since poor improvement There was no indication in the records to describe a condition that was degrading neurologically or presented with any red flags requiring cervical and lumbar MRI prescription after 18 days of chiropractic care. The (EIP)'s prognosis and treatment protocol was not dependent or effected by these studies as there were no indications that these tests were performed in Dr. Burg's notes. The MRIs were not a necessary procedure and not within standards of care. MRI studies simply did not benefit the (EIP) in this case. The standard of care to follow would not include MRI studies MRI protocol is indicated with failure of improvement only after 4-6 weeks of care. [Cites]"

Based upon the foregoing, respondent presented a sufficient defense of lack of medical necessity. The burden then shifts back to applicant to present its own evidence of medical necessity [West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131A (App. Term 2006)], by meaningfully referring to, or rebutting, respondent's evidence. Yklik, Inc. v. Geico Ins. Co., 28 Misc. 3d 133A (App. Term 2010).

Rebuttal

Applicant submitted the rebuttal, dated 6/5/23, of Dr. Michael Silver, a chiropractor, stating additional medical history in pertinent part:

".... The physical therapy notes from Care Physical Therapy, P.C., dated 3/15/2022 through 4/6/2022, indicated complaints of 9/10 neck pain. The treatment plan included physical therapy. On 4/5/2022, (the EIP) presented to Dr. David Burg for an evaluation of her injuries. At that time, she complained of neck pain and low back pain. The patient was therefore recommended chiropractic treatment. The chiropractic treatment notes by Dr. Burg from Seaview Chiropractic Based on the patient's clinical condition, Dr. Burg referred her for MRI studies

MRI of the cervical spine revealed C3/4, C4/5 and C6/7 disc herniations deforming the thecal sac, with C3/4 and C4/5 cord abutment, C3/4 right

neural foraminal extension and C6/7 bilateral neural foraminal extension abutting the exiting nerve roots, C4/5 and C6/7 bilateral neural foraminal narrowing in conjunction with facet and unciniate hypertrophic changes, C3/4, C4/5 and C6/7 central spinal stenosis in conjunction with posterior ligamentous hypertrophy and paracentral osseous hypertrophic changes, C2/3, C5/6 and C7/T1 disc bulges with C5/6 paracentral osseous hypertrophic changes, right neural foraminal narrowing in conjunction with facet and unciniate hypertrophic changes and C5/6 mild central spinal stenosis in conjunction with posterior ligamentous hypertrophy and cervical spine straightening.

MRI of the lumbar spinerevealed L4/5 and L5/S1 disc herniations deforming the thecal sac abutting the proximal nerve roots bilaterally with bilateral neural foraminal extension also noted at both levels, abutting the exiting left L5 nerve root at the L5/S1 level, with L4/5 bilateral neural foraminal narrowing in conjunction with facet and ligamentous hypertrophy and L3/4, L2/3, and L1/2 disc bulges with bilateral inferior neural foraminal extension at each level"

Dr. Silvers then addressed the medical necessity of the studies in pertinent part:

".... taking into consideration the patient's history, the history of the injury, the patient's complaints, the clinical findings, and a review of the medical history the MRI studies of the cervical spine and lumbar spine performed on 4/23/2022 were medically necessary

*when the patient was seen by Dr. Burg on 4/5/2022 (7 weeks post accident), the patient had pain in the neck and back **she started and received conservative therapy immediately after the initial examination** (5 weeks' worth) neck and back complaints did not improve with the therapy. Therefore, the patient had MRI studies of the cervical and lumbar spine on 4/23/2022 appropriate to perform the MRIs to identify the exact cause of neck and back pain and modify the treatment plan*

[Cite] "an MRI of the spine should be ordered when a patient fails to respond to conservative therapy over a three to four week period." It is a standard of care that the MRI of the spine may be performed if the symptoms do not improve after 3-4 weeks of conservative treatment, which conforms to the case herein the MRI studies were indicated in the time frame they were ordered by the attending physician ***[Cite]*** *MRI testing can be performed in cases of known or suspected soft tissue injuries, such as disc herniations, ligament tears, epidural hematoma, and spinal cord edema or hematoma, but more especially in the presence of red flags. (efficacy of MRIs) [Cites]"*

Discussion

At the hearing, the applicant argued there were no medical reports in the submission to support the peer review, which led to the query- does the failure of respondent to upload the EIP's medical reports result in not sustaining the lack of medical necessity defense?

I note the rebuttal reflected a review of limited pre-DOS medical records, whereas the peer review referenced additional record; the submissions did not include Dr. Burg's 4/5/22 examination record; and the MRI prescription was unclear as concerns the date of its issuance, but I note the rebuttal indicated it was issued on 4/5/22.

Upon considerable review of the limited evidence presented, I find the applicant's position sufficiently persuasive on the issue of medical necessity. *See, All Boro Psychological Servs., P.C. v. Geico Gen. Ins. Co., 34 Misc. 3d 1219(A) (Civ. Ct. 2012).*

Conclusion

Applicant is awarded the sum of \$1,728.97.

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
	Damadian MRI In Canarsie	04/23/22 -	\$725.77	Awarded:

	P.C.	04/23/22		\$725.77
	Damadian MRI In Canarsie P.C.	04/23/22 - 04/23/22	\$1,003.20	Awarded: \$1,003.20
Total			\$1,728.97	Awarded: \$1,728.97

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/17/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Simple interest on the above awarded amount shall be computed and paid at a rate of 2% per month, commencing on the date the claim was filed in arbitration and ending with the date of payment of the award.

C. Attorney's Fees

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

Respondent shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6.

- 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 NY

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

11/26/2023
(Dated)

Gerry Wendrovsky

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:
d3e861ca05da9c803eb552fc7911f92d

Electronically Signed

Your name: Gerry Wendrovsky
Signed on: 11/26/2023