

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sooraj Poonawala MD
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-21-1231-4593

Applicant's File No. DK21-204202

Insurer's Claim File No. 109084101

NAIC No. 16616

ARBITRATION AWARD

I, Jacques M. Leandre, 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 (FO)

1. Hearing(s) held on 06/05/2023, 11/06/2023
Declared closed by the arbitrator on 11/06/2023

Rachel Stein from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Helen Cohen from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,296.13**, 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 Assignor (FO), a 62 year-old male, was involved in a motor vehicle accident on 11/5/20. At issue in this case is \$2,296.13 representing doppler studies conducted on 7/26/21. Respondent timely denied the claim based upon several grounds including the lack of medical necessity defense supported by the independent medical examination (IME) of Dr. David Manevitz performed on 2/17/21 with an effective termination of benefits date of 3/5/21.

4. Findings, Conclusions, and Basis Therefor

This hearing was 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. No witnesses testified at this hearing. Any documents contained in the electronic file are hereby incorporated into this hearing. I have reviewed all relevant exhibits for both parties and make my decision in reliance thereon.

The Respondent Lack of Coverage defense fails, as Respondent fails to submit credible evidence to establish this portion of their defense. Respondent relies heavily on an EUO where the Assignor credibly recounts the motor vehicle accident in its entirety. In fact, the Assignor provided details regarding the injuries sustained which are consistent with the medical reports in question.

LACK OF MEDICAL NECESSITY

In order to support a lack of medical necessity defense, respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd , 11th and 13th Jud.

Dists. 2014). 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).

The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is 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 as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

In support of its contention that the services were not medically necessary, Respondent relies upon the IME report of Dr. David Manevitz, dated 2/17/21. A review of the examination report reveals that the Assignor's lumbar injury was resolving. Hence, Assignor had not reached pre-accident state at the time of the IME.

The results of this IME did not present a cogent medical rationale as to why further medical services were not medically necessary. Accordingly, the burden does not shift to the Applicant. See, Bronx Expert, supra.

Upon a review of the complete submissions, I find that Respondent has not met the burden of persuasion. The IME report submitted by the insurer does not set forth a factual basis and medical rationale for the conclusion that the Assignor's injuries were resolved to the point where further treatment would not be curative, and that the services which are the subject of the claim lacked medical necessity.

Accordingly, Applicant is awarded \$2,296.13.

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
	Sooraj Poonawala MD	07/26/21 - 07/26/21	\$654.34	Awarded: \$654.34
	Sooraj Poonawala MD	07/26/21 - 07/26/21	\$1,641.79	Awarded: \$1,641.79
Total			\$2,296.13	Awarded: \$2,296.13

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/17/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (as existing on the filing date of this arbitration), 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 Queens

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

12/06/2023
(Dated)

Jacques M. Leandre

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:
af36c6377cc7d2a51fa6949a4b9ea384

Electronically Signed

Your name: Jacques M. Leandre
Signed on: 12/06/2023