

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nassau Open MRI PC d/b/a 5th Ave Open
MRI
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No.	17-22-1275-8960
Applicant's File No.	366097
Insurer's Claim File No.	0679780352 2JH
NAIC No.	19232

ARBITRATION AWARD

I, Ritesh Mallick, 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: CA

1. Hearing(s) held on 11/08/2023
Declared closed by the arbitrator on 11/09/2023

Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

Zambeen Rabel, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$966.54**, 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 CA was injured in a motor vehicle accident that occurred on 8/4/22. CA was the 49-year-old female driver at the time of accident and complained of injuries to the neck, back, and knee post-accident. In dispute is the billing for an 8/22/22 right knee MRI. Respondent timely denied reimbursement of the claim for lack of medical necessity predicated upon the peer review of Dr. Marina Royzman, M.D. dated 9/30/22. The issue to be decided is whether Respondent's denial may be sustained.

4. Findings, Conclusions, and Basis Therefor

This case 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. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

RIGHT KNEE MRI 8/22/22 - PEER REVIEW

An insurance carrier must, at minimum, establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity. Vladimir Zlatnick, M.D., P.C. v. Travelers Indem. Co., 2006 NY Slip Op 50963(U) (App. Term, 1st Dep't 2006); accord Delta Diagnostic Radiology, P.C. v. Progressive Cas. Ins. Co., 21 Misc. 3d 142(A), 2008 NY Slip Op 52450(U) (App. Term, 2d Dep't, 2nd & 11th Jud. Dists. 2008). 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 Dep't 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, 7 Misc. 3d 544 (Civ. Ct., Kings County 2005). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, citing CityWide Social Work & Psychological Servs. v. Travelers Indem. Co., 3 Misc. 3d 608, 612 (Civ. Ct., Kings County 2004).

The claimant underwent an 8/22/22 right knee MRI. Dr. Royzman believes the MRI of the right knee was not medically necessary because it was prematurely prescribed. Specifically, positive physical exam findings on the initial examination prompted initiation of an "aggressive" course of conservative care per Dr. Royzman, which would not be the standard of care when dealing with a suspected derangement injury. However, the medical literature referenced by Dr. Royzman fails to substantiate her opinion on the issue of medical necessity. The guidelines referenced in the peer review state MRI has utility, should be performed for valid reasons, should be preceded by radiographs in most instances, and require correlation in order to properly guide treatment. The cited literature does not set forth a mandatory minimum with respect to volume of treatment prior to MRI, indicators for MRI, or circumstances where a radiograph would not be the first-line iteration of imaging study conducted.

Dr. Royzman's opinion is therefore deemed conclusory as it does not correlate with the substance of the medical authority she relies upon in reaching her conclusion on the

issue of medical necessity. As per the holding in Nir, the peer reviewer must establish a factual basis and medical rationale to support a finding that the services at issue were not medically necessary, including setting forth generally accepted standards in the medical community. Dr. Royzman's cited authority fails to support her conclusion as to medical necessity for the right knee MRI. Accordingly, the medical rationale espoused by Dr. Royzman in her peer review report is insufficient absent evidence of medical standards in the community.

Respondent has resultingly not met its burden on the issue of medical necessity.

Accordingly, Applicant's claim is granted.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Nassau Open MRI PC d/b/a 5th Ave Open MRI	08/22/22 - 08/22/22	\$966.54	Awarded: \$966.54
Total			\$966.54	Awarded: \$966.54

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/22/2022 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." 11 NYCRR § 65-3.9 (c). The Superintendent and the New York Court of Appeals have 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 (Ct. App. 2009).

C. Attorney's Fees

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

As this matter was filed on or 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 the mandate of 11 NYCRR § 65-4.6 (d). For claims that fall under the Sixth Amendment to the regulation, the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360."

- 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 Putnam

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

12/07/2023
(Dated)

Ritesh Mallick

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:
3ca33905ed6317658d6d2d58bf127e42

Electronically Signed

Your name: Ritesh Mallick
Signed on: 12/07/2023