American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Triborough ASC (Applicant)	AAA Case No.	17-23-1291-3977
	Applicant's File No.	00111020
- and -	Insurer's Claim File No.	95268-02
	NAIC No.	24309
Hereford Insurance Company (Respondent)		

ARBITRATION AWARD

I, Robyn McAllister, 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

1. Hearing(s) held on 12/05/2023
   Declared closed by the arbitrator on 12/05/2023

   Sasha Hochman, Esq. from Drachman Katz, LLP participated virtually for the Applicant

   Joseph Kuroly, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$8,744.97**, 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

   Whether Respondent properly denied Applicant's claim for providing the facility for the performance of a lumbar percutaneous discectomy to Assignor (JT), a 25 year-old female passenger, in connection with treatment of injuries sustained in a motor vehicle accident on September 2, 2021, based on a peer review by Vijay Sidhwani, D.O. and the EAPG Fee Schedule.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of $8744.97 for providing the facility for the performance of a lumbar percutaneous discectomy on July 25, 2022 to Assignor (JT), a 25 year-old female passenger, in connection with treatment of injuries sustained in a motor vehicle accident on September 2, 2021. Respondent timely denied Applicant's claim predicated on a peer review dated September 2, 2022 by Vijay Sidhwani, D.O. and the EAPG Fee Schedule.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim for the facility fee since the lumbar percutaneous discectomy was not medically necessary. I agree. The issue of medical necessity for the lumbar discectomy and post-operative supplies was previously addressed by this Arbitrator in Simply DME LLC v. Hereford Insurance Company, 17-22-1268-8769. In that case, I concluded that I was persuaded by the peer review report by Dr. Sidhwani, submitted by Respondent in support of its denial. My conclusion remains unchanged.

In the above-referenced case, I states as follows:

Dr. Sidhwani noted that following the accident, "the claimant came under the care of a chiropractor as well as a physician's assistant with the office of Macintosh medical for which an evaluation took place on 09/15/2021 by Scott Lyons, PA in regard to headache, nonradiating neck and thoracolumbar complaints as well as bilateral shoulder complaints. Physical examination is notable for diminished range of motion about the lumbar spine, other than anterior flexion which was within normal limits as well as normal range of motion reported about the cervical spine and thoracic spine with complaints of muscle spasm and tenderness. Full 5/5 motor strength was reported without any positive orthopedic testing. Trigger points were also reportedly palpated with trigger point injections routinely initiated at the time of the initial office visit and prior to providing any conservative care for this pain condition. The claimant was also prescribed multiple prescription medications and provided a referral for therapy. In addition to physical therapy, including hot pack, electrical stimulation, therapeutic massage and exercise, chiropractic manipulation was also provided as well as MR ls obtained during the acute phase of treatment including MRI of the lumbar spine on 12/14/2021 indicating L4/L5 posterior disc bulge impinging the ventral thecal sac and encroaching bilateral neural canals with resultant mild to moderate neural foraminal stenosis without any impingement upon the exiting nerve root identified."

Dr. Sidhwani further noted that Dr. Arden performed an initial consultation "on 06/20/2022, approximately six months later with no treatment documented during that time period. While there is no indication of any referred pain, numbness or tingling reported during the first three months following the accident, this report suggests complaints of neck pain radiating to the bilateral shoulders and low back pain radiating to the right buttock and posterior thigh. The previously obtained MRI findings were discussed and while lumbar radiculopathy is indicated, I can find no evidence of this prior to this visit and for which the claimant was routinely, and with complete indifference, recommended cervical and lumbar discectomy rather than an epidural steroid injection, typically recommended when there is clear clinical evidence that has not responded to adequate conservative care. The lumbar epidural percutaneous discectomy was performed on 07/25/2022 with a surgical pathology performed on 07/26/2022 indicating degenerative disc disease as well as a postoperative cold compression unit and back wrap prescribed by this physician for postoperative care."

Dr. Sidhwani asserted that "there is a six-month gap in treatment with physical therapy notes indicating that the claimant was tolerating treatment well, providing no indication as to the claimant's progress or lack of progress by the treating therapist. That is, if the claimant developed lumbar radiculopathy six months after the most recent treatment at evaluation secondary to the sprain/strain injuries sustained on 09/02/2021, I do not find any clinical or medical based evidence to substantiate the routine performance of a discectomy secondary to a bulging disc without any indication of impingement upon the exiting nerve root or history of radiculopathy during the first three months following the accident. Regardless, even if the claimant had presented with a clear radicular component, the standard of care typically indicates an epidural steroid injection to treat inflammation as a result of a sprain type injury as opposed to surgery performed due to underlying degenerative disc disease as conducted in this case without any clear clinical evidence of radiculopathy or nerve root impingement."

He further cited articles challenging the proven efficacy of percutaneous discectomy and opined that Assignor's condition did not warrant the procedure performed. Dr. Sidhwani concluded that "therefore, given the lack of any clinical or medical based evidence to substantiate the routine performance of the above lumbar percutaneous discectomy and accompanying services, including ambulatory care, surgical pathology, anesthesia and postoperative cold compression unit with lumbar wrap secondary to this unnecessary procedure, I find these services to be medically unnecessary and inconsistent with accepted medical standards of care secondary to a sprain/strain injuries sustained on 09/02/2021."

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial report, operative report and rebuttal to the peer review dated November 30, 2022 by Dr. Arden Kaisman. I was not persuaded by the medical evidence that the lumbar percutaneous discectomy and post-operative Game Ready unit with lumbar wrap were warranted.

According to the medical records and Dr. Kaisman's rebuttal, he did not examine Assignor until June 20, 2022. The last treatment notes prior to that date, as noted by Dr. Sidhwani, were in December, 2021, six months earlier. While Dr. Kaisman's rebuttal pointed to the findings on examination on June 20, 2022 and cited literature touting the efficacy of percutaneous discectomy, he did not address Assignor's lack of treatment prior to Dr. Kaisman's initial evaluation. Indeed, neither his initial report nor rebuttal discussed Assignor's prior course of treatment. Dr. Kaisman stated in his rebuttal that the procedure was ordered due to a "lack of response to conservative care," but there was no evidence presented that Assignor was receiving conservative care after December 2021.

Contrary to Applicant's contention at the hearing, I find that Dr. Sidhwani's peer review was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to demonstrate medical necessity. See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006).

Although Dr. Sidhwani did not provide a separate discussion regarding the necessity for Game Ready unit and lumbar wrap, he opined that the post-operative supplies were not medically necessary since the percutaneous discectomy was not medically necessary.

In Matter of Global Liberty Ins. Co. v. Medco Tech, Inc., 170 A.D.3d 558 (1st Dept 2019), the Court concluded as follows:

Petitioner relied on a peer review report that concluded, based on a review of the medical records, that the assignor's condition was degenerative in nature and not post-traumatic and therefore that the surgery undergone by the assignor was "not medically necessary in relation to the accident" (emphasis supplied). The arbitral award must be vacated and a de novo hearing held, because, on the record before us, as argued, it would be irrational to conclude that the need for the subject medical equipment was causally related to the accident (see Matter of Smith [Firemen's Ins. Co.], 55 NY2d 224, 232 [1982]; Mount Sinai Hosp. v Triboro Coach, 263 AD2d 11, 18-19 [2d Dept 1999]; Shahid Mian, M.D., P.C. v Interboro Ins. Co., 39 Misc 3d 135[A], 2013 NY Slip Op 50589[U] [App Term, 1st Dept 2013]).

Thus, in the instant case, Dr. Sidhwani's opinion that the surgery was not medically necessary for Assignor's degenerative bulging disc, and therefore, the derivative supplies also were not medically necessary was sufficient to establish Respondent's defense.

After careful consideration of the medical records, both the peer review and Dr. Kaisman's rebuttal, I find that Dr. Sidhwani's opinion was more persuasive and that Applicant failed to satisfy its burden of rebutting Dr. Sidhwani's assertions. Therefore, I find that Respondent properly denied Applicant's claim.

In the instant case, Respondent denied Applicant's claim predicated on the same peer review by Dr. Sidhwani. In support of its claim, Applicant did not submit a rebuttal to the peer review but submitted Dr. Kaisman's initial office visit dated 6/20/22, which served as letters of medical necessity for cervical and lumbar percutaneous discectomies as well the MRI report and pre-operative report. Nothing in the evidence changed my conclusion that Dr. Sidhwani's opinion was more persuasive than the treating physician's. Therefore, for the reasons noted above, I find that Respondent properly denied Applicant's claim.

Finally, inasmuch as I have upheld Respondent's denial, there is no need to reach Respondent's Fee Schedule defense.

Accordingly, Applicant's claim is denied in its entirety.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Westchester

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

12/09/2023
(Dated)

Robyn McAllister

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:
423bd504d2536ef0c13bdc43f68bf18f

Electronically Signed

Your name: Robyn McAllister
Signed on: 12/09/2023