

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1263-9842

Applicant's File No. RFA22-310494

Insurer's Claim File No. 1090672

NAIC No. 16616

ARBITRATION AWARD

I, Frank Marotta, 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-CR

1. Hearing(s) held on 11/21/2023
Declared closed by the arbitrator on 11/21/2023

Sheetal Paul, Esq. from The Russell Friedman Law Group LLP participated virtually for the Applicant

Fotini Lambrianidis, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$8,080.85**, was AMENDED and permitted by the arbitrator at the oral hearing.

The Applicant amended the amount in dispute to \$6,178.13.

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

3. Summary of Issues in Dispute

The record reveals that the Assignor-CR, a 38-year-old-male, sustained injuries in a motor vehicle accident on

The Applicant seeks reimbursement for MRIs of the cervical spine and right foot on 11/18/20 (\$2,637.44), lumbar spine and right knee on 12/3/20 (\$2,686.00), left shoulder on 12/14/20 (\$1,318.00) and thoracic spine on 12/24/20 (\$1,439.41).

The Respondent denied the claim for the lumbar spine and right knee MRI on 12/3/20 and the cervical spine and right foot on 11/18/20 based on a peer review by Ayman Hadhoud, MD dated 3/3/21.

The Respondent has not provided any evidence that the MRIs left shoulder on 12/14/20 or the thoracic spine on 12/24/20 were denied but asserts that these claims should be dismissed as prematurely filed.

The issue is whether the MRIs performed on 11/18/20 and 12/3/20 were medically necessary and whether the Applicant's claim for the MRIs on 12/14/20 and 12/24/20 should be dismissed without prejudice.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of \$8,080.85, amended to \$6,178.13 to conform with the New York State Workers' Compensation Fee Schedule (WCFS) for MRIs performed on 11/18/20, 12/3/20, 12/14/20 & 12/24/20.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

There is no dispute that the bill in issue was submitted to the Respondent for the purposes of Applicant's prima facie case, Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 114 A.D.3d 33, 977 N.Y.S.2d 292 (2d Dept. 2013), *aff'd* 25 NY 3d 498 (2015); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). In addition to a proof of mailing that indicates the bill was mailed on 9/23/21 Respondent acknowledges receipt of the bill on their denial document. Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co., 2005 NY Slip Op 25402, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005). There is also no dispute that the Respondent issued timely denial of the claim based on a peer review by Salvatore Corso dated 10/6/21 preserving for consideration their defense that the device provided was not medically necessary. Insurance Law §5106(a); 11NYCRR §65- 3.8(a) (1);

11NYCRR §65- 3.8(c), Presbyterian Hosp. v Maryland Cas. Co., 90 NY 2d 274, 660 NYS 2d 536 (1997).

Applicant's prima facie case is not in dispute. Applicant provides proof that the bill was mailed to Respondent on 8/18/21. Combined with Respondent's denial acknowledging receipt of the bill on 8/23/21 is sufficient to establish Applicant's prima facie case. See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 114 A.D.3d 33, 977 N.Y.S.2d 292 (2d Dept. 2013), aff'd 25 NY 3d 498 (2015); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004); Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co., 2005 NY Slip Op 25402, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

DOS: 11/18/20 and DOS: 12/3/20

The Applicant submitted a bill in the amount of \$2,637.44 for MRIs of the cervical spine (\$1,319.44) and right foot (\$1,318.00). At the hearing the Applicant amended the fee for the cervical spine MRI to \$967.70 and the right foot to \$724.91 for a total of \$1,692.61. Both parties agree with the fee adjustment.

The Applicant submitted a bill in the amount of \$2,686.00 for MRIs of the lumbar spine (\$1,368.00) and right knee (\$1,318.00). At the hearing the Applicant amended the fee for the lumbar spine MRI to \$1,003.20 and the right knee to \$724.91 for a total of \$1,728.11. Both parties agree with the fee adjustment.

Both parties agree that the amended amount in dispute reflects permissible fees for the MRIs in issued. The parties further stipulate and agree that the Applicant established its prima facie burden, and the Respondent timely denied the claims based on a peer review by Dr. Ayman Hadhoud dated 3/3/21. See Amaze Med. Supply v Allstate Ins. Co., 2004 NY Slip Op 24119, 3 Misc3d 43, 44 [App Term, 2d & 11th Jud Dists 2004]; Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp., 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

Dr. Hadhoud provides a history of the Assignor as a 38 -year-old male, who was involved in a motor vehicle accident on 10/30/20. He reviewed and highlighted the findings of the initial evaluation report dated 11/3/20 by Dr. Greco noting the claimant's complaints were those of neck pain, midback pain, lower back pain, left shoulder pain, right knee, right ankle, and right foot pain. The cervical spine examination revealed tenderness and decreased range of motion with pain. The left shoulder examination revealed decreased range of motion with pain. The right knee examination revealed decreased range of motion with pain. The right foot/ankle examination revealed pain. The claimant's gait was reported to be intact. The plan included physical therapy, pain/neurology/orthopedic consultation, chiropractic/acupuncture, MRI of the brain, cervical/thoracic/lumbar spine, left shoulder, right ankle, right knee, and right foot, DMEs and medications. Dr. Hadhoud also reviewed the referral for MRI of the brain, cervical/thoracic/lumbar spine, left shoulder, right ankle, right knee, and right foot, dated 11/03/20, signed by Dr. Greco.

According to Dr. Hadhoud, the MRIs of the cervical and lumbar spine were not medically necessary.

Dr. Hadhoud asserts that the standard of care in the clinical context of trauma after a motor vehicle accident would be a thorough physical examination, ruling out "red flags" (such as of fracture, dislocation, instability, or significant progressive neurologic deficits), initiation of reasonable trial of conservative treatment for six to eight weeks together with a course of anti-inflammatory medication and exercise programs. Afterwards, if the patient continues to exhibit subjective and objective evidence of progressive neurological or orthopedic deficit that may require further aggressive intervention, MRI would be indicated.

Dr. Hadhoud notes that according to (ACR Appropriateness Criteria Low Back Pain - J Am Coll Radiol 2016 American College of Radiology): *"It is now clear that uncomplicated acute LBP and/or radiculopathy is a benign, self-limited condition that does not warrant any imaging studies. Imaging is considered in those patients who have had up to 6 weeks of medical management and physical therapy that resulted in little or no improvement in their back pain. It is also considered for those patients presenting with red flags raising suspicion for a serious underlying condition, such as cauda equina syndrome (CES), malignancy, fracture, or infection"*.

Dr. Hadhoud further notes that according to the (American Family Physician Web site at www.aafp.org/afp. Copyright © 2011) "For most patients with neck, back, knee, or shoulder pain, a diagnosis can be made with a history, physical examination, and plain film radiography; surgery is not indicated. Neck and back pain have many causes, but the majority of patients will improve with conservative management.^{1,2} Shoulder pain is most often associated with conditions that do not require surgery (e.g., muscle strains, tendinopathy).³ Similarly, knee pain, especially without discrete trauma, is often secondary to nonsurgical conditions such as tendinopathy and patellofemoral syndrome.⁴ The treatment for these common conditions-which usually involves muscle strengthening and stretching, and possibly physical therapy-would not be dependent on MRI results. Most patients will improve within a few weeks or months.

Dr. Hadhoud concludes that

"In this case, it was premature in time to order these MRI studies, without allowing enough time for the effect of the physical therapy to take place or the acute symptoms to subside. The submitted records show that the claimant was started on conservative therapy treatment on 10/30/20. Four days later, on 11/3/20, Dr. Greco evaluated the claimant and ordered these MRI studies when the claimant did not complete a full course of conservative management, non-steroidal anti-inflammatory medications and exercise program before ordering these studies."

Dr. Hadhoud goes on

"It is clear that there was not enough time given for any conservative treatment to control the claimant's symptoms or for the acute symptoms to resolve. At such an early

stage, management of the claimant's condition, in this clinical context, should be basically conservative in nature. Surgical referral and invasive pain management procedures would not be treatment options, during this stage of trauma. In other words, ordering and/or performing these MRI studies of the cervical and lumbar spine at that time would not alter or impact the course of the treatment in any medically significant way."

Dr. Hadhoud further asserts that the MRI of the right foot performed on 11/18/20 was not medically necessary. Dr. Hadhoud reports that the standard of care regarding ordering an MRI of the foot after motor vehicle accident in the absence of fractures would consist of examination of the patient by obtaining the mechanism of injury and obtain objective examination findings by physical examination. The plan of treatment should consist of reducing pain and controlling any associated inflammation by prescribing non steroidal anti-inflammatory medications. Conservative treatment in the form of physical therapy and /or appropriate exercise program should be initiated for at four to six weeks. MRI would be warranted should symptoms of pain, swelling, clicking, or giving out of the ankle joint continue. Such symptoms should be substantiated by positive physical examination findings including orthopedic testing. If fracture is excluded by x-rays and the patient continues to present with the above-mentioned subjective complaints and objective findings, MRI of the ankle/foot would be reasonable.

Dr. Hadhoud reports that in this case, the records show that the claimant was started on conservative therapy treatment on 10/30/20. Four days later, on 11/3/20, Dr. Greco evaluated the claimant and ordered this MRI study before a full course of conservative management, non-steroidal anti-inflammatory medications, and exercise program. Dr. Hadhoud goes on to say that the MRI study of the right foot was ordered regardless of the patient's response to the conservative treatment.

Dr. Hadhoud cites the Medscape article, acute ankle sprains by Craig C Young, MD; Chief Editor: Sherwin SW Ho, MD updated January 14, 2019) noting "*MRI is not indicated unless unusual features are present, such as extensive swelling, ecchymosis, or pain, that suggest an osteochondral lesion not observed on plain radiographs. Even if MRI scans demonstrate bone bruising or actual articular cartilage damage, conservative ankle sprain treatment is indicated initially.*" which is not the case here as explained above. According to Dr. Hadhoud, there was no unusual fracture, extensive swelling or possible subtle lesion to warrant the MRI.

Dr. Hadhoud concludes that in his opinion it would have been reasonable to provide sufficient time for the claimant to complete a full course of physical therapy before considering this study. At such an early stage, management of the claimant's condition should be basically conservative. Surgical referral and invasive pain management procedures would not be treatment options. In another words, ordering this MRI study of at that early time would not alter or impact the course of the treatment in any medically significant way.

Dr. Hadhoud further asserts that the MRI study of right knee performed on 12/03/20 was not medically necessary. Dr. Hadhoud states that the standard of care regarding ordering

an MRI of the knee joint after motor vehicle accident in the absence of fractures would consist of examination of the patient by obtaining the mechanism of injury and perform an objective examination of the knee. The plan of treatment should consist of reducing pain and controlling any associated inflammation by prescribing non-steroidal anti-inflammatory medications. Conservative treatment in the form of physical therapy and /or appropriate exercise program should be initiated. MRI should be considered when there is lack of improvement or response to 4-6 weeks of appropriate conservative course and continuation of positive orthopedic testing and clinical presentation of internal derangement which is not the case here.

Dr. Hadhoud cites American Family Physician - Volume 85, number 3, 2012 noting "*MRI should not be performed for at least four to six weeks after the onset of knee pain, and then only after conservative treatment has been ineffective.*" which was not the case in this claimant's documentation. Dr. Hadhoud further cites NPS Medicinewise News 26 September 2016, Diagnostic knee MRI - When is it needed? stating "*Consider using: after an appropriate period of conservative management (approx. 6- 8 weeks), when there is doubt about the diagnosis following history/examination when the level of patient disability after 6-8 weeks is such that surgery is being considered as part of a shared decision-making approach when the presence of other complex or unusual pathology is suspected (eg, a tumour in or around the joint).*" Dr. Hadhoud notes that per the (RSNA, 2005, Volume 234, Number 1, Acute Knee Trauma), "*The value of a dedicated extremity MR imaging examination in the initial stage after knee trauma is limited.*"

As to the right knee MRI Dr. Hadhoud concludes that "*...at such an early stage, management of the claimant's condition, in this clinical context, should be basically conservative in nature. Surgical referral would not be a treatment option, during acute phase of trauma. In this case, there was not enough time allowed for the acute symptoms to subside or for the effect of the proposed conservative treatment to take place in controlling the claimant's symptoms before ordering this study. MRI of the knee joint should only be used after failure of the conservative treatment and in the absence of a clear diagnosis from the physical examination and history which is not the case in this claimant's documentation.*"

Dr. Hadhoud concludes "*in this case it was premature in time to order or perform this study. The submitted records show that the claimant was started on physical therapy treatment on 10/30/20. Four days later, on 11/3/20, Dr. Greco evaluated the claimant and ordered this MRI study when the claimant did not complete a full course of physical therapy treatment.*"

When an insurer relies on a peer review to support their lack of medical necessity defense, the peer reviewer must provide a factual basis and medical rationale in support of its opinion that the services in question were not medically necessary, including evidence of a of medical standards. Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219 (U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 546-47 (Civ. Ct. Kings Co. 2005). Having reviewed the medical records of the prescribing healthcare provider and supporting his opinion that the MRIs were not medically necessary with medical literature and articles

in addition to the ODG Treatment, Integrated Treatment/Disability Duration Guidelines, I find that the Respondent met its prima facie burden establishing the lack of medical necessity for the MRIs of the cervical and lumbar spine, as well as the right knee. As to the right foot MRI, the medical record clearly indicates that the Assignor was in a boot. This fact was not fully discussed by Dr. Hadhoud in finding the MRI of the foot medically unnecessary and therefore I find his peer review insufficient to support its denial.

As to the remaining MRIs when a Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant who must then present its own evidence of medical necessity. See West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) at 2 (App. Term 2d & 11th Dists. Sept. 29, 2006) citing Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed])." See also Lynbrook Medical of New York, PC v Praetorian Ins. Co., 48 Misc. 3d 139(A); 2015 NY Slip Op 51226(U) (App. Term, 2d, 11th and 13th Jud Dists 2015); Alfa Medical Supplies v. Geico General Ins. Co., 2013 NY Slip Op 50064(U), 38 Misc. 3d 134(A) (App. Term, 2d, 11th and 13th Jud Dists 2013).

In support of its claim the Applicant relies on the medical records and a peer review rebuttal by Dr. Drora Hirsch dated 5/4/23.

Dr. Hirsch provides a history of the Assignor as a 38-year-old male was involved in a motor vehicle accident on 10/30/20. At the time of accident, the patient was the rider of a bike that was side swiped by a vehicle. As a result of the impact, the patient sustained multiple injuries, including injuries to his right foot, neck, low back, and right knee. He developed complaints of pain and was seen by Dr. John Greco on 11/03/20 for an initial evaluation. At that time, he had pertinent complaints of neck pain rated at 9/10; right foot pain rated at 9/10; lower back pain rated at 9/10; and right knee pain rated at 9/10. The pain was aggravated by going up and down stairs, turning and flexing neck, bending down, walking, grasping, pushing, lifting, carrying heavy objects, prolonged sitting and standing, laying down, getting up from seated position, sneezing and coughing. The patient's right foot was in a boot. Examination of the cervical spine revealed a restricted and painful range of motion. Examination of the lumbar spine revealed inability to stand and range of motion could not be assessed. Examination of the right knee revealed a painful range of motion. Diagnostic impression - cervical radiculopathy; strain unsp muscle and tendon at ankle and foot level-unsp-IE; lumbar radiculopathy; and sprain unsp knee-IE. The plan was for MRIs of the cervical spine, right foot, lumbar spine and right knee, physical therapy, chiropractic, and acupuncture treatment, orthopedic, neurology and pain consultations, medications and follow up. Dr. Hirsch also discusses the Initial physical therapy evaluation dated 11/17/20 indicating achy, sharp, dull, and burning pain rated at 8/10 at neck, lower back, right knee. decreased tolerance for bending, extending, standing, gait, stairs, working and lifting, Restricted range of motion at cervical, lumbar, right foot, knee, and shoulder. Decreased muscle strength; noted tenderness and muscle spasm on palpation; difficulties in activities of daily living, antalgic gait. The impression - pain, muscle spasm, sprain/strain, decreased ROM, muscle strength at upper back, lower back and right shoulder and right knee. The plan was for physical therapy.

Dr. Hirsch asserts that the ultimate judgment regarding the propriety of any specific procedure must be made by the physician. Great deference should be given to the treating provider charged with the responsibility to examine, diagnose, and treat a patient. Also, there are no specific guidelines delineating the absolute structured path for tests to be universally prescribed to all patients.

Addressing any argument pertaining to conservative treatment in this case, as evident from the medical records, the claimant was experiencing significant pain (the patient rated his pain at 9 on the pain scale of 10) due to the injuries suffered in the motor vehicle accident. Moreover, the physical evaluation findings indicated the possibility of disc herniation and internal derangement/tear. Such a situation called for an early MRI to provide an early diagnosis leading to a targeted treatment plan. Conservative management is often recommended by the treating physicians just as a correct course of action, but the MRI test is important prior to the completion of conservative treatment to assist the treating doctor in mapping the conservative management. Similarly, in this case too, the patient was started on a course of conservative management from 11/17/20 and was in the first week of treatment till the performance of the right foot and cervical spine MRIs on 11/18/2020; was in the third week of treatment till the performance of lumbar spine and right knee MRIs on 12/03/2020, which adheres to the time frame of three to four weeks as prescribed by The Diagnostic Imaging Utilization Management 2011-2012 Program Guidelines, effective date April 15, 2013. However, the various medical records of the patient indicate that he continued to complain of pain despite taking the treatment.

Avoiding diagnostic delays prevents the development of irreversible damage and loss of function in muscle. According to Dr. Hirsch, Dr. Greco did not deviate from any standards of care for this patient and his decision is supported by the following:

As for the spinal MRIs Dr. Hirsch notes *"Advanced imaging can aid the clinician in deciding which form of conservative therapy should be provided to the patient. When used properly, MRI and other advanced imaging studies help differentiate between the two diagnoses, and appropriate conservative intervention can be initiated."* Erwin G. Gonzalez, M.D. & Ayman S. Materson, M.D., *Cutting Through the AHCPR Guidelines: The Nonsurgical Management of Acute Low Back Pain*, 40-41 (1997). MRI is the best possible tool in the diagnosing of spinal cord compression that is present as a result of a herniated disc. Determining whether the patient has a disc herniation versus disc bulge, spinal fracture or compression of the spinal cord would, in fact, alter the patient's future treatment. It is only through the use of MRI that these disc abnormalities or any spinal cord compression can be visualized See, Matthew G. Zmurko, et al., *Cervical Sprains, Disc Herniations, Minor Fractures, and Other Cervical Injuries in the Athlete*, 22 *Clinics in Sports Med.* 513, 516 (2003). While MRI *"give[s] less detailed bone configuration, [MRI] reveal[s] what may be encroaching on the nerve roots or the articular surfaces."* See Rene Cailliet, M.D., *Low Back Pain Syndrome* 235 (F.A. Davis Co. 4th ed., 1989)

Dr. Hirsch asserts that diagnostic imaging, particularly MRI, plays a crucial role in evaluating and detecting spinal trauma. Early detection often leads to prompt and accurate diagnosis, expeditious management, and avoidance of unnecessary procedures.

(J Craniovertebr Junction Spine. 2011). Moreover, the ACR guidelines clearly mention "Acute Trauma" to be one of the indicators for an MRI of the spine. Spinal MRI is indicated after a trauma to evaluate nature and extent of injury to spinal cord, vertebral column, ligaments, thecal sac and paraspinal soft tissues following trauma. [ACR-ASNR-SCBT-MR PRACTICE PARAMETER FOR THE PERFORMANCE OF MAGNETIC RESONANCE IMAGING (MRI) OF THE ADULT SPINE Amended 2014 (Resolution 39)]. The claimant's history of significant trauma due to acute injury is indicative of the need for MRIs. The need for the MRIs was based on the claimant's history and physical findings during the examination.

As to the MRI of the knee, Dr. Hirsch notes that early MRI in acute knee injury can provide early diagnosis of internal derangement and therefore, allow targeted treatment. These patients had significantly less physiotherapy appointments and less time off work, which may offset the cost of the MRI. Moreover, these patients were significantly more satisfied with the service. See A RANDOMISED CONTROLLED TRIAL, N K Patel; A Bucknill; J Denning; D Ahearne; K Desai; and M Watson, Journal of Bone and Joint Surgery - British Volume, Vol 92-B, Issue SUPP_III, 414.

In this case, the need for right foot, cervical spine, lumbar spine and right knee MRIs was based on the claimant's history and physical findings during the examination performed by Dr. Greco on 11/3/20, which did reflect significant findings including neurological deficits indicating a possibility of disc involvement and internal derangement/tear when the patient had the following subjective complaints and objective findings: neck pain rated at 9/10; right foot pain rated at 9/10; lower back pain rated at 9/10; right knee pain rated at 9/10; and pain aggravated by going up and down stairs, turning and flexing neck, bending down, walking, grasping, pushing, lifting, carrying heavy objects, prolonged sitting and standing, laying down, getting up from seated position, sneezing and coughing; patient's right foot was in a boot; restricted and painful range of motion of the cervical spine; inability to stand; range of motion of the lumbar spine could not be assessed due to patient's inability to stand; and painful range of motion of the right knee.

Dr. Hirsch also refers to the positive findings during the evaluation performed by the other treating provider are worth a mention at this juncture which noted: achy, sharp, dull and burning neck pain rated at 8/10; achy, sharp, dull and burning lower back pain rated at 8/10; achy, sharp, dull and burning right knee pain rated at 8/10; decreased tolerance for bending, extending, standing, gait, stairs, working and lifting; difficulties with ADLs; decreased ranges of motion of the cervical spine, right foot, lumbar spine and right knee; tenderness and muscle spasm; antalgic gait; and decreased muscle motor strength of the cervical spine, lumbar spine, right knee and right upper extremity.

Dr. Hirsch argues that based on the subjective complaints and positive findings the patient presented with significant pain; antalgic gait; inability to stand; and showed motor strength deficits indicating disc involvement and tear; therefore, to rule out suspected disc macro trauma as well as a possibility of internal derangement/tear, the MRIs were recommended. Thus, in my opinion, it was appropriate to perform the MRIs

and identify the exact cause of right foot, cervical spine, lumbar spine and right knee pain and modify the treatment plan accordingly before there is further deterioration of the claimant's condition.

Dr. Hirsch also notes the presence of "red flags" (such as of fracture, dislocation, instability, or significant progressive neurologic deficits) could be some of the reasons to perform an immediate MRI. However, the lack of these findings does not infer that an MRI is not warranted and refers to the ACR guidelines clearly indicate acute trauma as one of the indicators for the performance of MRI. Dr. Hirsch notes that in this case, the patient had suffered direct trauma to his cervical and lumbar spine, presented with signs and symptoms of neurologic abnormalities and the physical exam findings were consistent with disc herniation/disc protrusion. MRIs herein confirmed disc herniation as well as disc bulge/protrusion. In this case, the patient had suffered significant direct trauma to his right foot due to the motor vehicle accident and the physical exam findings were consistent with lisfranc/tendon injury. In this case, the patient had suffered significant direct trauma to his right knee due to the motor vehicle accident and the physical exam findings were consistent with meniscal tear.

Dr. Hirsch goes on to discuss MRI as a proven imaging modality for disorders of the ankle and foot. It is a useful diagnostic tool for evaluation of patients with ankle pain because it globally evaluates all structures of the ankle. It is the preferred imaging modality for suspected stress fractures and osteomyelitis of the foot and ankle.

Dr. Hirsch notes that the American College of Radiology Practice Guidelines for the performance of MRI of the adult spine has various indications for performing an MRI for the evaluation of, the nature of, and extent of injury to the spinal cord, vertebral column, ligaments, and intraspinal and paraspinal soft tissues following trauma. MRI of the spine is medically necessary when any of a number of criteria, such as recent significant trauma, or milder trauma in patients about age 50; any suggestion of abnormal neurologic findings below the level of injury; progressive neurologic deficit; persistent unremitting pain with or without positive neurologic findings. The claimant's clinical scenario is consistent with the highlighted variations. Similarly, as per the American College of Radiology ACR Appropriateness Criteria, Last Review date 2005, cervical and lumbar spine MRIs are recommended when any of the following red flags are present: (1) Recent significant trauma, or milder trauma, age>50, (2) unexplained weight loss, (3) unexplained fever, (4) immunosuppression (5) history of cancer, (6) IV drug use, (7) prolonged use of corticosteroids, osteoporosis, (8) age>70, (9) focal neurological deficit progressive or disabling symptoms, and (10) duration greater than 6 weeks. In this case, Dr. Greco's recommendation of the cervical and lumbar spine MRIs is consistent with the ACR criteria variant 1 as the patient had sustained significant direct trauma in the motor vehicle accident.

Dr. Hirsch also notes that *"Magnetic resonance imaging (MRI) has become the preferred modality for imaging the knee to show pathology and guide patient management and treatment. The knee is one of the most frequently injured joints, and knee pain is a pervasive difficulty that can affect all age groups."* See pubmed.ncbi.nlm. According to Dr. Hirsch, it is important to note that in knee trauma patients often, more than one injury coexists.

Dr. Hirsch goes on to say that the citations referred to in the peer review are not for trauma cases and it was the trauma from the accident that caused the claimant's pain pattern and the involved structures needed to be evaluated by MRI. It is the treating doctor's responsibility to prescribe the correct test at the correct time to properly diagnose and treat patients. Further, incidental abnormalities or misleading findings themselves do not negate the medical necessity of the MRI studies. The results of any MRI should always be correlated with patient's clinical findings and subjective complaints. Therefore, to deny the testing because of the possibility of incidental abnormalities is speculative and not relevant to the facts of this case. The clinical correlation between the MRI findings and the patient's presentation should be left up to the treating physician.

Dr. Hirsch also argues that as to the right knee MRI the citations and guidelines listed in the peer review are not specific to injuries that have resulted from traumatic onset such as a motor vehicle accident and therefore are not relevant to this case. In this case, the injuries sustained by the patient were the direct result of a traumatic car accident dated 10/30/2020. Most importantly, such guidelines are framed only to assist the practitioners and do not establish a legal standard of care. Eventually, it is up to the clinician to decide, based on the circumstances of the injury and the individual patient's exam findings, whether to order testing. Moreover, these articles do not address any standards of care that were deviated from in the performance of the right foot and right knee MRIs. Dr. Hirsch also argues that Dr. Hadhoud fails to state as to how the performance of the right knee MRI deviated from the said article or any standards of medical care. Moreover, the patient's subjective complaints and objective findings following this MVA indicated a possibility of tear/internal derangement that can only be visualized by MRI.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find that the Applicant has not established the medical necessity for the MRIs of the cervical and lumbar spine or the right knee. The record reveals that the MRIs of the cervical/lumbar spine and right knee were ordered by Dr. Greco at the time of his initial examination on 11/3/20, 4 days after the accident. The Respondent medical expert asserts that they were ordered prematurely. As indicated above I find Dr. Hadhoud's peer review sufficient to support Respondent denial of the MRIs. The Applicant submits a peer review rebuttal by Dr. Drora Hirsch, who is not one of the Assignor's healthcare provider or the doctor who ordered the MRIs. Therefore, I am presented with a question of fact as to whether the spinal MRIs were medically necessary to be determined based on conflicting opinions of two experts neither of which examined or ordered the testing. Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013). A finding as to the medical necessity for these MRIs must be made based on which expert opinion is accepted based on a review of the medical records. Having reviewed the medical records, the peer review and rebuttal, I find as a matter of fact that the MRIs ordered 4 days after the accident were prematurely ordered and therefore not medically necessary. Dr. Hirsch offers her

opinion throughout the rebuttal that the spinal MRIs when ordered were done properly but she herself noting that the MRI of the cervical spine and right foot was performed on 11/18/20; in the third week of treatment, and the lumbar spine and right knee 12/03/20 all of which adheres to the time frame of three to four weeks as prescribed by The Diagnostic Imaging Utilization Management 2011-2012 Program Guidelines, effective date April 15, 2013. Therefore, by her own indication there is a timeframe that impacts the performance of MRIs. Comparing the evidence presented by the parties against each other and in consideration of when the MRIs were requested, I am more persuaded by the opinion of Dr. Hadhoud and find that the MRIs of the cervical/lumbar spine and right knee were not medically necessary.

Applicant is awarded its claim for the right foot in the amended amount of \$724.91.

DOS: 12/14/20 & DOS: 12/24/20

The Applicant submitted a bill in the amount of \$1,318.00 for an MRI of the left shoulder performed on 12/14/20.

An insurer is required to pay, in whole or in part, a claim for no-fault benefits within 30 days. Insurance Law §5106(a); 11NYCRR 65- 3.8 (c). This 30-day period may be extended by making a request for additional verification of the claim within, "*15 business days of receipt of the prescribed verification forms*" 11 NYCRR §65-3.5(b) and if the verification requested has not been supplied to the insurer 30 days after the original request the insurer shall, "*at a minimum... within 10 calendar days, follow with the party from whom the verification was requested, either by telephone call properly documented in the file or by mail.*" 11 NYCRR §65-3.6(b).

An insurer is entitled to receive all items necessary to verify a claim directly from the parties from whom such information was requested. 11 NYCRR §65-3.5(c) and is not obligated to pay or deny a claim until it has received verification of all relevant information requested. See Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., 24 A.D.3d 492, 807 N.Y.S.2d 382 (2d Dept 2005); New York & Presbyterian Hospital v Progressive Cas. Ins. Co., 2004 NY Slip Op 01750, 5 AD3d 568 (App Div 2d Dept. 2004). The 30-day period to pay or deny a claim does not begin until all outstanding verification is received; therefore, any claim for payment made prior receipt of all outstanding verification is premature. 11 NYCRR §65-3.8 (a); Central Suffolk Hospital v. NY Central Mut Fire Ins. Co., supra.

In support of its argument the Respondent submits identical verification request letters dated 1/25/21 and 3/1/21. The letters are addressed to the Applicant c/o R. FRIEDMAN LAW GROUP. Respondent's letters acknowledge receipt of the bill and advises the Applicant that the following additional verification is required to properly respond to your bill:

"1 Please provide us with copy of Police Report (REQUESTED FROM CLAIMANT)

2 Please provide copies of the MRI films of the LEFT SHOULDER."

The letters are copied to the OFSHTEIN LAW FIRM, P.C. 15 BAY 29TH STREET, 2ND FL, BROOKLYN, NY 11214 and to the Applicant and Assignor directly.

The Respondent asserts that the claim should be dismissed without prejudice as prematurely filed.

The Applicant submitted a bill in the amount of \$1,439.41 for an MRI of the thoracic spine performed on **12/24/20**.

In support of its argument the Respondent submits identical verification request letters dated **2/5/21** and **3/12/21**. The letters are addressed to the Applicant c/o R. FRIEDMAN LAW GROUP. Respondent's letters acknowledge receipt of the bill and advises the Applicant that the following additional verification is required to properly respond to your bill:

"1 Please provide us with copy of Police Report (REQUESTED FROM CLAIMANT)

2 Please provide copies of the MRI films of the THORASIC SPINE."

The letters are copied to the OFSHTEIN LAW FIRM, P.C. 15 BAY 29TH STREET, 2ND FL, BROOKLYN, NY 11214 and to the Applicant and Assignor directly.

The Respondent asserts that the claim should be dismissed without prejudice as prematurely filed.

As to the dates of service 12/14/20 and 12/24/20 the Respondent submits an unsworn and undated "Affidavit of Mailing" by Luis Campbell, Mail Room Supervisor for the Respondent. According to Mr. Campbell the verification requests discussed above were mailed to the Applicant, claimant, and the claimant's attorney on 1/25/21 and 3/1/21 for the date of service 12/14/23 (correct date of service is 12/14/20) and 2/25/21 and 3/12/21 for the date of service 12/24/21 (correct date of service is 12/24/20). Where a no-fault insurer is relying on the defense an action is premature because additional verification is outstanding, it is the insurer's prima facie burden at trial to demonstrate that verification requests were timely mailed and that they did not receive the requested verification. Island Life Chiropractic, P.C. v Travelers Ins. Co., 2019 NY Slip Op 51273(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019). See also Right Aid Medical Supply Corp. v. State Farm Mut. Auto. Ins. Co., 2019 Slip Op 51409(U) (App. Term 2d, 11th and 13th Jud. Dist. 2019). Absent from Respondent's submission is any evidence sufficient to establish that when the Applicant filed for arbitration the items requested in arbitration remained outstanding.

Based on the proof I find that the Applicant is entitled to a reimbursement for the MRI of the left shoulder and thoracic spine but not as billed. As an arbitrator I may take judicial notice of the fee schedule when the finding does not require any expert medical assessment but only a plain reading of the billing and fee schedule. Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); LVOV Acupuncture,

P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 NY Slip Op 51721(U) (App Term 2d, 11th & 13th Jud Dists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 NY Slip Op 50040 (U) (App Term, 1st Dept. 2011).

The Applicant billed \$1,318.00 for the MRI of the left shoulder using CPT Code 73221-LT. Code 73221 has a relative value of 16.61. When multiplied by the conversion factor assigned to radiology services in Region IV (\$58.19) the proper reimbursement for the left shoulder MRI on 12/14/20 is \$966.53. The Applicant billed \$1,439.41 for the MRI of the thoracic spine using CPT Code 72146. Code 72146 has a relative value of 18.14. When multiplied by the conversion factor assigned to radiology services in Region IV (\$58.19) the proper reimbursement for the thoracic spine MRI on 12/24/20 is \$1,055.56. The Applicant is awarded these amounts for the MRIs of the left shoulder and thoracic spine.

Where no denial has been issued and no payment has been made, it is clear from the statute that the claim is overdue, and interest runs from the thirty first day after the claim was presented to the carrier for payment. New York Presbyterian Hospital v. Allstate Insurance Company, 30 A.D.3d 492, 819 N.Y.S.2d 268, 2006 N.Y. Slip Op. 04815 (2nd Dept 2006). Hempstead General Hospital v. Insurance Company of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2nd Dept 1994). In this matter the Respondent does not provide any proof as to when the bills were received nor did the Applicant submit any proof as to when they were mailed to the Respondent from a rebuttable presumption as to when the bills were received could be calculated. See New York Presbyterian Hospital v Allstate Ins. Co., 2006 NY Slip Op 03558, 29 AD 2d 547 (2nd Dept 2006).

Without sufficient proof in the record from either side, I find that the bills in issue were received on the date that the Respondent issued their initial verification requests and interest on the left shoulder MRI run from 2/25/21 and interest for the thoracic spine bill runs from 3/8/21.

CONCLUSION:

For the reasons noted above I find for the Applicant in the amount of \$2,747.00.

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
	Dynamic Medical Imaging PC	11/18/20 - 11/18/20	\$2,637.44	\$1,692.61	Awarded: \$724.91
	Dynamic Medical Imaging PC	12/03/20 - 12/03/20	\$2,686.00	\$1,728.11	Denied
	Dynamic Medical Imaging PC	12/14/20 - 12/14/20	\$1,318.00		Awarded: \$966.53
	Dynamic Medical Imaging PC	12/24/20 - 12/24/20	\$1,439.41		Awarded: \$1,055.56
Total			\$8,080.85		Awarded: \$2,747.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/26/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is governed by 11 NYCRR §65-3.9. Where a motor vehicle accident occurs after April 5, 2002, 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 (c) indicates that "If an applicant does not request arbitration ... with 30-days after the receipt of a denial of claim or payment of benefits ... interest shall not accumulate ... until such action is taken." The Superintendent and the New York Court of Appeals has interpreted this

provision to apply regardless of whether the denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009). Where no denial has been issued and no payment has been made, it is clear from the statute that the claim is overdue, and interest runs from the thirty first day after the claim was presented to the carrier for payment. New York Presbyterian Hospital v. Allstate Insurance Company, 30 A.D.3d 492, 819 N.Y.S.2d 268, 2006 N.Y. Slip Op. 04815 (2nd Dept 2006). Hempstead General Hospital v. Insurance Company of North America, 208 A.D.2d 501, 617 N.Y.S.2d 478 (2nd Dept 1994). Interest for the left shoulder MRI runs from 2/25/21 and interest for the thoracic spine bill runs from 3/8/21. The Respondent shall pay interest on the remaining award begin from the date of filing with the American Arbitration Association and end on the date the award is paid.

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. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850." Id. The minimum attorney fee that shall be awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). 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." 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 Suffolk

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

12/10/2023
(Dated)

Frank Marotta

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:
6c6497a8a9b303dd76c04a99abb3c31a

Electronically Signed

Your name: Frank Marotta
Signed on: 12/10/2023