

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New Age Medical PC  
(Applicant)

- and -

MVAIC  
(Respondent)

AAA Case No. 17-23-1282-6393

Applicant's File No. 369237

Insurer's Claim File No. 663450

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Lisa Capruso, 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 12/13/2023  
Declared closed by the arbitrator on 12/13/2023

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

Jeffrey Kadushin, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$6,679.66**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$5741.09 to be in accordance with the Radiology Fee Schedule.

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

3. Summary of Issues in Dispute

Applicant seeks reimbursement for MRIs performed for the Assignor, a 35-year-old female, from 10/19/21 through 1/25/22, after an accident on 10/3/21.

Respondent denied the claims based on Dr. Jackson's peer review of 9/9/22 and Dr. Kiernan's peer review of 9/9/22.

#### 4. Findings, Conclusions, and Basis Therefor

Applicant submitted claims to the Respondent for MRIs performed for the Assignor after an automobile accident that occurred on 10/3/21. Assignor, a pedestrian struck by a vehicle, alleged injuries to the neck, back, shoulders, and hips as a result. In dispute are dates of service 10/19/21 through 1/25/22 for which the Applicant has submitted bills for MRIs of the right hip, right shoulder, right ankle, left hip, lumbar spine, right finger, and cervical spine.

A no-fault provider establishes its prima facie entitlement to judgment by submitting proper evidentiary proof that it generated and mailed the prescribed statutory billing forms to the insurer, that the insurer received it, and that the no-fault benefits were overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 A.D. 3d 742-43 (2d Dept. 2004).

The burden shifts to the Respondent to demonstrate a lack of medical necessity for the items at issue. *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc 3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. *Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co.*, 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); *King's Med. Supply Inc. v. Country Wide Ins. Co.*, 5 Misc 3d 767, 783 N.Y.S. 2d 448.

Respondent denied the claims for the MRIs of the right hip, right shoulder, right ankle, left hip, right finger, and cervical spine based on Dr. Harry Jackson's peer review of 9/9/22. Dr. Jackson set forth the Assignor's injuries as including cervical sprains/strains, cervical myofascial pain and trigger points, cervical radiculitis, right shoulder sprains/strains, right hand derangement and 2nd finger injury, bilateral hip contusions and derangement, right ankle derangement. Dr. Jackson found that the MRIs were not medically necessary as there was no suspicion that there was a serious underlying problem. It was premature to recommend the MRIs as there was no attempt to treat with physical therapy and the MRIs were recommended at the same time. Dr. Jackson cited the standard of care as including physical therapy modalities and the results of the MRIs would not be needed.

Respondent denied the claim for the MRI of the lumbar spine based on Dr. Howard Kiernan's peer review of 9/9/22. Dr. Kiernan noted that at the exam of 10/28/21, there were no complaints regarding the lumbar spine and the recommendations included physical therapy. Dr. Kiernan found that the Assignor had not received a full course of physical therapy prior to the referral of the MRI. Dr. Kiernan cited the standard of care for the injuries sustained.

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. *West Tremont Medical Diagnostic P.C., v. GEICO*, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006). The Applicant has not submitted a formal rebuttal and the medical records do not contradict the peer review report. To meet the burden of persuasion regarding medical necessity, the Applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. See generally, *Pan Chiropractic, P.C. v Mercury Ins. Co.*, 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009]. The Applicant has failed to do so. As such, the Applicant is unable to establish the medical necessity of the several MRIs in dispute herein.

Accordingly, the Applicant's claims are denied.

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 VT

SS :

County of Windham

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

12/13/2023  
(Dated)

Lisa Capruso

### **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:**  
1315d59ed5891e708ed0efe1a5d06abd

### **Electronically Signed**

Your name: Lisa Capruso  
Signed on: 12/13/2023