

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All County LLC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-23-1294-1893

Applicant's File No. 136969

Insurer's Claim File No. 0509133100004

NAIC No. 36447

ARBITRATION AWARD

I, Nancy Kramer Avalone, 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 LC

1. Hearing(s) held on 12/06/2023
Declared closed by the arbitrator on 12/06/2023

Robin Grumet, Esq., Of Counsel from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Kerry Forte, Claims Specialist from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,937.44**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed in the Arbitration Request was amended to \$2,695.52, in accordance with the applicable fee schedule and in accordance with Respondent's calculations.

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

3. Summary of Issues in Dispute

Assignor LC was a 39-year old female passenger involved in a motor vehicle accident on Feb. 16, 2022 and sought medical treatment. Applicant seeks reimbursement for MRI

studies of the cervical spine, lumbar spine and left ankle provided to Assignor LC on Oct. 14, 2022 and Oct. 22, 2022 respectively. The services were prescribed by Max Jean-Gilles, MD. Respondent denied the services as not medically necessary, based upon the peer view of Dorothy Scarpinato, MD, Board Certified in Orthopedic Surgery. A rebuttal was submitted by Max Jean-Gilles, MD.

The Applicant reduced the amount in dispute in accordance with the applicable fee schedule.

The issue presented is whether the MRI studies of the cervical spine, lumbar spine and/or left ankle was/were medically necessary.

There were no issues raised with respect to the submission of the claims or issuance of the denial of claim forms. After reviewing the Record, I find that Applicant established its *prima facie* case of entitlement to No-Fault compensation, and Respondent issued timely denial of claim forms.

4. Findings, Conclusions, and Basis Therefor

The instant matter was decided based upon the submissions of the parties as contained in the electronic file ("E-file") maintained by the American Arbitration Association (MODRIA), and the oral arguments of the parties' representatives. The hearing was held via a web-based video conferencing platform (ZOOM). I have reviewed the documents contained in the E-file, heard the arguments of the parties, and make my decision in reliance thereon.

Pursuant to 11 NYCRR §65-4.5(o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursable for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

Medical Necessity Issue.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. (*AJS Chiropractic, P.C. v Travelers Ins. Co.*, 25 Misc 3d 140[A], 2009 NY Slip Op 52446[U] [App Term 2009]).

The Respondent must, at a minimum, establish a detailed factual basis and a sufficient medical rationale for its asserted lack of medical necessity. (*Delta Diagnostic Radiology, P.C. v Progressive Cas. Ins. Co.*, 21 Misc 3d 142[A], 2008 NY Slip Op 52450[U] [App Term 2008]).

Additionally, it must be proven that said rationale is supported by evidence of the generally accepted medical/professional practices. (*Nir v Allstate Ins. Co.*, 7 Misc 3d 544 [Civ Ct, Kings County 2005]).

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant/provider which must then present its own evidence of medical necessity. (*See generally, W. Tremont Med. Diagnostic, P.C. v Geico Ins. Co.*, 13 Misc 3d 131[A], 2006 NY Slip Op 51871[U] [App Term 2006]).

Where the denial is predicated upon a peer review report, and the peer review report establishes *prima facie*, that there was no medical necessity for the services performed, the provider must refute the peer review doctor's determination. (*See A Khodadadi Radiology, P.C. v NY Cent. Mut. Fire Ins. Co.*, 16 Misc 3d 131[A], 2007 NY Slip Op 51342[U] [App Term 2007]).

Similarly, where the insurer denies the claim based upon an Independent Medical Examination (IME) of the Assignor, and the IME establishes *prima facie* that there was no medical necessity for continued treatment, the Applicant/provider bears the burden of demonstrating that the treatment at issue was medically necessary by a preponderance of the credible evidence. (*See Amato v State Farm Ins. Co.*, 40 Misc 3d 129[A], 2013 NY Slip Op 51113[U] [App Term 2013])

Findings of Fact.

In support of the lack of medical necessity defense, the Respondent relied upon the peer review report of Dr. Scarpinato, dated Dec. 9, 2022, in which the doctor concluded that the MRI services were not medically necessary. Dr. Scarpinato opined that the lumbar and cervical spine MRIs were premature.

- *MRIs of the spine*- Per the peer review, the standard of care for advanced radiologic studies such as MRI scans should be reserved for a patient when there is evidence of neurologic red flags or deteriorating status or when there was a "strong suspicion of pathology based on appropriate clinical screening that would make the patient/client inappropriate for conservative treatment plan and was not being considered a surgical candidate at this point, Therefore, neither the cervical nor the lumbar spine MRI services were medically necessary.
- *Ankle MRI* - Dr. Scarpinato wrote: "Although MRI is a sensitive, noninvasive diagnostic test for detecting anatomic abnormalities of the ankle and hindfoot, its findings may be

misleading if not closely correlated with radiographs, clinical history, physical examination, physiologic tests such as nerve conduction analysis and electromyography, and other imaging studies when indicated." **(ACR-SPR-SSR PRACTICE PARAMETER FOR THE PERFORMANCE AND INTERPRETATION OF MAGNETIC RESONANCE IMAGING (MRI) OF THE ANKLE AND HINDFOOT -Revised 2021).**"

The peer review contained no further discussion with respect to the MRI studies of the ankle joint. A medical standard of care was not articulated. Thus, I find that the peer review report did not establish lack of medical necessity for the left ankle MRI.

With respect to the cervical and lumbar spine MRI services, I find that the Respondent has met the burden of proof, thus, the burden thus shifts to the Applicant to rebut the Respondent's evidence.

In opposition, Applicant relied on the medical documentation in the Record and the rebuttal report by Dr. Jean-Gilles, the prescribing physician. Dr. Jean-Gilles disagreed with the peer review and stated as follows:

- Dr. Jean-Gilles described his findings at the initial exam on Sept. 19, 2022 which included neck pain radiating to the right shoulder/arm, left ankle pain and lower back pain radiating to the right buttock and hip;
- The Assignor presented with an antalgic gait; examination of the left ankle revealed reduced inability, ability/inability to walk on heels and swelling/ecchymosis/abrasions/lacerations/crepitus/clicking/tenderness over the medial malleolus.

After reviewing the totality of the credible and admissible evidence and considering the arguments of the parties, I find that the Applicant has established the medical necessity for the ankle MRI studies. However, I find the peer report persuasive with respect to the cervical and lumbar spine MRI studies and was not successfully rebutted. This is because the studies were ordered at the initial evaluation, prior to the receipt of any conservative care, and no factual basis was provided which warranted the deviation from the standard of care. *This award is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.*

Applicant is entitled to statutory interest, attorney fees and the filing fee, as set forth in Sections 6. B, C and D, below.

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
	All County LLC	10/14/22 - 10/21/22	\$2,937.44	\$2,695.52	Awarded: \$966.54
Total			\$2,937.44		Awarded: \$966.54

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/06/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the **date noted above** until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

Respondent shall pay the Applicant attorney's fees in accordance with 11 NYCRR §65-4.6(d). As this matter was filed **after 02/04/2015**, this case is subject to the provisions promulgated by the Dept. of Financial Services in the Sixth Amendment to 11 NYCRR §65-4 (Ins. Reg. 68-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 Nassau

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

12/15/2023

(Dated)

Nancy Kramer Avalone

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:
191cf77d13a8eecffc58eabbbd6a4961

Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 12/15/2023