

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Better Soon RX Inc
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-23-1292-5562

Applicant's File No. 176.151

Insurer's Claim File No. 9WINV11020-02

NAIC No. 29742

ARBITRATION AWARD

I, Michael Resko, 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: Claimant

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

Constance Roland Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Maureen Knodel Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,229.20**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated and agreed that (i) Applicant has met its *prima facie* burden by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim was mailed to and received by Respondent; (ii) Respondent's denial of the subject claim was timely issued; and (iii) the amount claimed does not exceed the maximum permissible charges under the fee schedule applicable to the disputed services.

3. Summary of Issues in Dispute

The EIP/Assignor is referred to herein as Claimant. Claimant is a 36-year-old male driver injured in a motor vehicle accident on 11/13/22.

Applicant seeks payment of a single claim for lidocaine 5% ointment, meloxicam tablets, tizanidine tablets, and omeprazole tablets dispensed to Claimant on date of service 01/10/23.

Respondent denied this claim based on a peer review report by Stuart Stauber, MD (dated 03/06/23).

The following evidence was submitted, reviewed, and considered: All documents contained in the ADR Center as of the date the hearing was declared closed.

4. Findings, Conclusions, and Basis Therefor

The medications at issue in this case was prescribed for Claimant on 01/06/23 by Joseph Martone, PA-C. There is in evidence an "Initial Examination Report" on the letterhead of Eastern Parkway Medical Health Services PC (Cathy Delorme Pagan, MD) dated 11/17/22. In his peer review report Dr. Stauber included "Report submitted from Joseph Martone, P.A. date of service January 6, 2023".

In Respondent's submissions there are two (2) reports dated 01/06/23. Both are on the letterhead of Atlantic Medical & Diagnostic, PC. One is a procedure report detailing trigger point injections (TPI) administered to Claimant on that date, and the other is a report of a clinical examination (signed by Joseph Martone, PA-c and reviewed by Hiram Emmanuel Luigi-Martinez, MD).

In the "history" section of his peer review report, Dr. Stauber discussed only the initial examination of Claimant on 11/17/22, which was not performed by the prescribing physician and which was seven (7) weeks prior to the date the medications at issue were prescribed.

Submission of a properly completed claim form is all that is required to establish, *prima facie*, that the services at issue were medically necessary. *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co.*, 37 Misc.3d 19, 952 N.Y.S.2d 372 (App. Term 2d, 11th & 13th Dists. 2012).

Respondent must overcome the presumption of medical necessity by submitting competent evidence sufficient to "establish a factual basis and medical rationale for the lack of medical necessity of [Applicant's] services. *Nir v. Allstate*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005).

If Respondent's denial is based on a peer review, the peer review will be found "insufficient if it is unsupported by or controverted by evidence of medical standards" or "if it fails to provide specifics of the claim, is conclusory, or otherwise lacks a basis in the facts of the claim." *Nir, supra, citing, Amaze Medical Supply v. Allstate*, 3 Misc.3d 43, 779 N.Y.S.2d 715 (App Term 2d and 11th Jud Dists 2004).

For the reasons set forth above, Dr. Stauber's review analysis is factually *insufficient* to establish a *prima facie* defense of lack of medical necessity. Dr. Stauber did not discuss the clinical examination of Claimant by the prescribing doctor on the date of the prescription in his analysis of medical necessity for the prescribed medications.

Based on the evidence before me, the medications dispensed to Claimant on date of service 01/10/23 were medically necessary.

Applicant is awarded **\$2,229.20**. This Award is in full disposition of all claims and issues before me in this proceeding.

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
	Better Soon RX Inc	01/10/23 - 01/10/23	\$2,229.20	Awarded: \$2,229.20
Total			\$2,229.20	Awarded: \$2,229.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to the Court of Appeals decision in LMK Psychological Services P.C. v. State Farm, 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009), interest is tolled until the filing date where the 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]).

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e).

- 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 Westchester

I, Michael Resko, 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)

Michael Resko

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:
8d9c342d665b14783181b8c137f5fafb

Electronically Signed

Your name: Michael Resko
Signed on: 12/15/2023