

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Linden West Medical PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1297-6817

Applicant's File No. 138242

Insurer's Claim File No. 0662992387 2SJ

NAIC No. 29688

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 KG

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

James McNamara, Esq. from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,621.75**, 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

Assignor KG was a 12-year old female rear-seated passenger involved in a motor vehicle accident on March 18, 2022 and sought medical treatment. Applicant is seeking reimbursement for physical therapy treatment and office visits provided to Assignor KG from August 12, 2022 through January 31, 2023. Respondent denied the services as not medically necessary, based upon the Independent Medical Examination ("IME") of Pierce J. Ferriter, MD, Board Certified in Orthopedic Surgery. Based upon Dr. Ferriter's report all future No-fault orthopedic and related services were terminated on August 11, 2022. No fee schedule issues were raised.

The issue to be determined is whether the medical treatment provided after the termination of benefits was medically necessary.

There were no issues raised with respect to the submission of the claims or issuance of the denial forms. Therefore, I find that the Applicant has established its *prima facie* case, and the Respondent preserved all defenses set forth in the denial 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 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.

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) (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 Casualty Ins. Co.*, 21 Misc.3d 142A, 880 N.Y.S.2d 223 (2nd Dept. 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.*, 2006 NY Slip Op 51871(U), 13 Misc. 3d 131(A), 824 N.Y.S.2d 759 (App. Term).

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), 841 N.Y.S.2d 824, 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.

To support their position, the Respondent submitted the IME report of Dr. Ferriter, dated July 19, 2022. The Assignor was transported via ambulance to Kings County Hospital where she was evaluated, treated, and discharged. The Assignor reported undergoing a course of conservative treatment and MRI studies of the cervical and lumbar spine, and right wrist/hand. She missed six (6) days of school following the accident. Dr. Ferriter concluded that all injuries were satisfactorily resolved, and that no further orthopedic treatment or diagnostic testing was needed, i.e., not medically necessary.

In opposition, Applicant relied on the medical documentation in the Record, including a re-evaluation report dated August 16, 2022 by Dr. Bernard Osei Tutu, which I deem contemporaneous with the IME. The report documented that the Assignor presented with complaints of pain in the cervical and lumbar spine. Upon palpation the physician noted mild spasm and tenderness throughout the spine. The treatment plan included continuation of physical therapy. MRI studies of the lumbar spine revealed bulging discs at levels L4/5 and L5/S1. Cervical spine MRI report revealed bulging disc at level C4/5.

After a complete review of the evidence, and arguments of counsel, I find in favor of the Applicant as the contemporaneous exam and MRI studies contradicted the findings of the IME examiner. Thus, the claim is awarded to the Applicant. *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 | Status |
|--------------|------------------------|---------------------|-------------------|----------------------------|
| | Linden West Medical PC | 08/12/22 - 01/31/23 | \$3,621.75 | Awarded: \$3,621.75 |
| Total | | | \$3,621.75 | Awarded: \$3,621.75 |

B. The insurer shall also compute and pay the applicant interest set forth below. 05/02/2023 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.

12/17/2023
(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:
b1c7a49414d2ad4a8aba188e1a984673

Electronically Signed

Your name: Nancy Kramer Avalone
Signed on: 12/17/2023