

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Phoenix Medical Services P.C. DBA
Rockville Centre Pain Management &
Rehabilitation
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No.	17-23-1296-6944
Applicant's File No.	2983955
Insurer's Claim File No.	228028593-003
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Ann Lorraine Russo, 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: patient

1. Hearing(s) held on 12/14/2023
Declared closed by the arbitrator on 12/14/2023

Marcy Cohen, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Kerianne Keller, claims representative from Avis Budget Group participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$871.10**, 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

The issue in dispute in this case is the nonpayment by respondent for medical services for the thirty-six-year-old male patient as a result of a motor vehicle accident on 8/9/2022 for date of service on 1/10/2023 by the applicant. The respondent issued timely denials based upon the independent medical examination performed by Dr. Aruna Seneviratne on 11/7/2022 effective 11/21/2022.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of applicant's counsel and the respondent's claims representative for the respective parties. No witness testimony was presented at the hearing.

The issue in dispute in this case is the nonpayment by respondent for medical services for the thirty-six-year-old male patient as a result of a motor vehicle accident on 8/9/2022 for date of service on 1/10/2023 by the applicant. The respondent issued timely denials based upon the independent medical examination performed by Dr. Aruna Seneviratne on 11/7/2022 effective 11/21/2022. The amount of \$871.10 is in dispute for the injection services in this case.

A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof either that the defendant had failed to pay or deny the claim within the requisite 30-day period, or that the defendant had issued a timely denial of claim that was conclusory, vague or without merit as a matter of law. See Insurance Law Section 5106(a); *Ave T MPC Corp. v. Auto One Ins. Co.*, 32 Misc.3d 128(A), 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 51292(U), 2011 WL 2712964 (App. Term 2d, 11th & 13th Dists. July 5, 2011); *Westchester Medical Center v. Nationwide Mut. Ins. Co.*, 78 AD3d 1168, 911 N.Y.S.2d 907 (2nd Dept. 2010) and *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 31 AD3d 512 (2006). In the case at hand, the respondent issued timely denials based upon independent medical examination challenging the medical necessity of the medical services in dispute. The denial is timely and promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimers are predicated in this case. As a result, the respondent has timely denied the applicant's claims thereby preserving its defense based upon the medical necessity of the medical services in this case.

The independent medical examination report by Dr. Aruna Seneviratne on 11/7/2022 effective 11/21/2022 is not persuasive in this case. Dr. Seneviratne provided that the patient did exhibit less than normal ranges of motion in the right shoulder together with tenderness upon palpation of the acromioclavicular joint or over the greater tuberosity during the examination on 11/7/2022. The medical records and reports around the same time frame as the independent medical examination report on 11/7/2022 provide significant clinical findings and events in support of additional medical treatment for this thirty-six-year-old male patient as a result of the motor vehicle accident on 8/9/2022 in this case. The medical documentation supports the continuation of the medical services in this case. Dr. Seneviratne does not sufficiently analyze and discuss the patient's pertinent clinical findings upon the patient's status and condition and course of medical treatment. Dr. Seneviratne does not sufficiently incorporate and/or discuss the pertinent physical examination and accident events and the impact upon the patient's status and condition. Dr. Seneviratne does not sufficiently incorporate and implement the clinical events and findings of the examinations performed by the patient's various medical providers that provide significant clinical findings and events and recommendation for additional medical treatment for the patient's condition and status.

In addition, the independent medical examiner possessed medical records for review in the independent medical examination reports but does not implement the results and impact on the patient's status and condition. The medical reports and records by the patient's treating medical providers and examination reports provide the patient's complaints for the spinal column and extremities that are consistent with the treatment notes for the patient's status and condition in this case. The independent medical examiner did not sufficiently evaluate and apply the diagnostic test results or physical examination reports to the events of the independent medical examination. The medical records provide pertinent persistent clinical findings and events for the patient together with positive objective tests to warrant the performance of the continuation of the medical treatment, including the medical services in this case.

The independent medical examination reports findings and events are not persuasive in this case. The medical records provided patient's complaints and objective findings for the patient that warranted further medical intervention and treatment, including medical services. There are reports and records that provide inconsistent and contrary clinical findings and events from the independent medical examination by Dr. Seneviratne in this case. There are medical records and reports in further support of the course of medical treatment recommended and provided to the patient in this case. The medical reports provide the way the decision to perform the medical services for the patient was established and the impact of the medical services upon the patient's course of medical treatment and recovery. The medical records are consistent and persuasive and provide the patient's continued subjective complaints and positive objective findings in support of the medical decision to continue the performance of medical services for the patient in this case. There are medical reports that provide the medical services affected the patient's status and well-being. The medical records and reports provide the patient's medical history, course of medical treatment and status of recovery utilizing the medical services for the patient. There is sufficient contemporaneous documentation in support of the medical services performed after the independent medical examination performed by the respondent's independent medical examiner in this case. The report dated 10/25/2022 by Contemporary Orthopedics the patient's treating medical provider noted contrary and inconsistent clinical findings and events from the independent medical examination by Dr. Seneviratne. The medical records and reports provide a detailed course of medical treatment and the lack of significant favorable results upon which the recommendation for additional medical services was based by the patient's treating medical providers in this case. The medical reports provided significant clinical findings and events contrary to and inconsistent to the events and findings provided in the independent medical examination report by Dr. Seneviratne in this case. There are medical reports that indicate that the patient received significant benefits in the medical treatment plan as a result of the medical services in this case. Consequently, the medical services performed by the applicant after the respondent's independent medical examination, by Dr. Aruna Seneviratne in this case, are granted.

Based upon the evidence presented, it is the opinion of this Arbitrator that the applicant has established that the medical services in dispute in this case were warranted.

Accordingly, the applicant's claim is granted.

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
	Phoenix Medical Services P.C. DBA Rockville Centre Pain Management & Rehabilitation	01/10/23 - 01/10/23	\$871.10	Awarded: \$871.10
Total			\$871.10	Awarded: \$871.10

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/24/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay the applicant interest from the date of the arbitration filing on 4/24/2023.

C. Attorney's Fees

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

The respondent shall pay the applicant attorney fees pursuant to 11 NYCRR Section 65-4.6.

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

12/19/2023
(Dated)

Ann Lorraine Russo

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:
19d71e1f2adc672642964c00707f5906

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 12/19/2023