

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PARS Medical PC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-23-1297-4046

Applicant's File No. 23-002368

Insurer's Claim File No. 18727520

NAIC No. Self-Insured

ARBITRATION AWARD

I, Darren Sheehan, 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 12/14/2023
Declared closed by the arbitrator on 12/14/2023

Jared Mallimo from The Licatesi Law Group, LLP participated virtually for the Applicant

Erin O'Neill from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,180.82**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount in dispute.

3. Summary of Issues in Dispute

Applicant submitted a bill in the amount of \$4,180.82 for date of service 2/28/2023. The bill relates to a cervical discectomy with fluoroscopic guidance performed on the claimant, a 34-year-old female pedestrian struck by a motor vehicle on 8/9/2022. The bill was denied payment by respondent on the basis of a peer review prepared by Gary

Yen, M.D., dated 3/29/2023, who determined that the services rendered were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

The insurer's expert must show that the services provided were inconsistent with the generally accepted medical/professional standards that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling. *Prime Psychological Services P.C. v. Progressive Casualty Ins. Co.*, 24 Misc 3d 1244(A), 2009 N.Y. Slip Op. 51868(U) at 3 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009).

"[T]here appears to be no basis in the law, and no basis in logic, for accepting an affirmed peer review doctor's opinion, *carte blanche*, without scrutinizing the report's content." Where a peer review opinion rests upon conclusory assumptions and/or disputed facts, the review is insufficient to prove the insurer's entitlement to judgment as a matter of law on its lack of medical necessity defense. *Novacare Medical P.C. v. Travelers Property Casualty Ins. Co.*, 31 Misc. 3d 1205(A), 2011 N.Y. Slip Op. 50500(U) at 4 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

Dr. Yen reported that the claimant was a pedestrian struck by a motor vehicle on 8/9/2022. She sustained multiple injuries including most relevant, the cervical spine. Following the accident, she was transported to the emergency room at Coney Island Hospital, however the peer review does not contain any further details.

Next, Dr. Yen discussed the 8/18/2022 evaluation report from Alexandre Grigorian, D.O. In the words of the peer reviewer, he summed up this doctor's examination findings as such:

Examination of cervical spine noted positive for Foraminal compression test. Examination of coccyx noted mild tenderness on palpation. Examination of the right shoulder revealed tenderness on palpation. Her examination findings were noted positive for decreased ROM. Diagnosis of rule out cervical radiculopathy, right shoulder derangement, bilateral knee derangement and coccydynia was

made. Claimant was advised to undergo conservative care. She was advised to undergo physical therapy, chiropractic care, MRI of cervical spine, right shoulder, and NCV/ EMG.

Following this exam, it was noted that the claimant started physical therapy on 9/19/2022, continuing until 9/27/2022. Acupuncture therapy also started on 9/19/2022 yet ended a bit later on 10/31/2022.

An MRI of the cervical spine taken on 9/8/2022 revealed: Focal acute central and left lateral herniations of the nucleus pulposus at the CS/6 and C6/7 levels, with impingement of nerve roots centrally and on the left.

Reviewing the most recent office visit on 2/28/2023 by Isaac Kreizman, M.D., the peer review remarked that the claimant continued to experience neck pain, tenderness, decreased range of motion, orthopedic tests performed then still produced positive findings (e.g., Distraction test, Shoulder abduction test).

On the basis of the doctor's review of the available medical records, he determined that the cervical discectomy with fluoroscopic guidance was not medically necessary. He wrote:

Cervical discectomy is recommended as an option if there is a radiographically demonstrated abnormality to support clinical findings consistent with one of the following: (1) Progression of myelopathy or focal motor deficit; (2) Intractable radicular pain in the presence of documented clinical and radiographic findings; or (3) Presence of spinal instability when performed in conjunction with stabilization. Surgery is not recommended for disc herniation in a patient with non-specific symptoms and no physical signs.

The doctor tells us that this criteria is found in an article entitled, "Percutaneous Endoscopic Cervical Discectomy Versus Anterior Cervical Discectomy and Fusion: A Comparative Cohort Study with a Five-Year Follow-Up."

I read the article and did not find these criteria listed at all. The article does not discuss any lead up to surgery or boxes to check sort to speak before recommending the surgery.

That was not the point of this article. This article covers the procedure, some risks, post-operative guidance, and various studies that addressed technological advances with the procedure as it has developed through the years.

Instead, I see immediately, in the first sentence, that its authors had high regard for cervical discectomies writing: "Percutaneous endoscopic cervical discectomy (PECD) is an effective minimally invasive surgery for soft cervical disc herniation in properly selected cases. **The current gold standard** is anterior cervical discectomy and fusion (ACDF)." (Emphasis added). In fact, the studies evaluated in this article found "the rates of excellent or good results were 88.24% and 90.63%."

Another citation was made to "Treatment of cervical spondylotic radiculopathy with posterior percutaneous endoscopic cervical discectomy: Short-term outcomes of 24 cases". Let's start with the fact that this article was supported only by a study of 24 patients from 2016 and 2017. So, not only is the sample size small, but the study was conducted several years ago. Anyhow, the end conclusion was that the procedure was "safe and effective". Here too, there was nothing written about a standard of care which may be compared against our case to illustrate some sort of deviation.

Thus, it is unclear to me how either one of these two medical references helped Dr. Yen's position.

As such, the peer review fails to establish the lack of medical necessity for the services performed herein.

Accordingly, I award in favor of applicant.

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
	PARS Medical PC	02/28/23 - 02/28/23	\$3,776.72	Awarded: \$3,776.72
	PARS Medical PC	02/28/23 - 02/28/23	\$404.10	Awarded: \$404.10
Total			\$4,180.82	Awarded: \$4,180.82

B. The insurer shall also compute and pay the applicant interest set forth below. 04/28/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from the filing date of this case, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11

NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(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 Suffolk

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

12/21/2023

(Dated)

Darren Sheehan

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:
bf961aa50c53e4a82c5fab966ac08ea8

Electronically Signed

Your name: Darren Sheehan
Signed on: 12/21/2023