

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Medical Imaging PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-22-1260-1935
Applicant's File No.	RFA22-308977
Insurer's Claim File No.	8734943800000004
NAIC No.	22055

ARBITRATION AWARD

I, Brian Rudolph, 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: KMD

1. Hearing(s) held on 11/22/2023
Declared closed by the arbitrator on 11/22/2023

Alexander Munn, ESQ. from The Russell Friedman Law Group LLP participated virtually for the Applicant

Rachel Hochhauser, ESQ. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,970.90**, was AMENDED and permitted by the arbitrator at the oral hearing.

As per counsel, the Applicant amends the amount at issue to \$1,728.98 to comply with the proper fee schedule.

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

3. Summary of Issues in Dispute

The Applicant seeks reimbursement of charges for MRIs of the Cervical and Lumbar Spine performed on the claimant (KMD 24-year-old female) on 3/23/22,

following a 2/22/22 motor vehicle accident. The Respondent timely denied the claim based upon the peer review conducted by its consultant, Dante Brittis, M.D., dated 5/30/22.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

At the hearing for this matter, this Arbitrator fully disclosed a potential conflict to the representatives for the parties, providing specific factual details. This Arbitrator disclosed that there was no reason why this Arbitrator could not be fair and impartial in deciding this matter. The parties both agreed that they had no issue with this Arbitrator hearing the matter and both consented to proceed with the arbitration matter.

In order to support a lack of medical necessity defense, the Respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 20140). The Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to the Applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. Slip Op 52116 (App. Term 1 Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity.

The civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir supra

In support of its contention the MRIs were not medically necessary respondent relies upon the peer review report of Dante Brittis, M.D. With regards to the MRIs at issue Dr. Brittis asserts the MRIs were not medically necessary based upon the following grounds: There were no clinical findings suggesting acute intervertebral disc herniation injuries in either region. The treatment plan and expected outcomes would have been the same whether these MRI studies were ordered or not. This was not part of the standard workup for minor soft tissue strain injuries such as these. If all conservative treatment measures have been attempted and failed and the claimant had persistent orthopedic findings suggesting herniated intervertebral disc herniation in the cervical or lumbar spine with progressive neurological deficits, then MRI studies might have been considered. That was not the case here.

The Respondent has factually demonstrated the services rendered were not medically necessary. Accordingly, the burden now shifts to the Applicant, who bears the ultimate burden of persuasion. See Bronx Expert supra.

In opposition to the peer review report the Applicant offers a rebuttal from Drora Hirsh, M.D. The affidavit of Dr. Hirsh fails to meet the burden of persuasion in rebuttal. I do not believe Dr. Hirsh's affidavit sufficiently rebuts the peer review of Dr. Brittis. Notably the MRIs at issue were recommended 10 days after the accident. Therefore, based upon all of the foregoing reasons, the Applicant has failed to meet its burden.

Based on the foregoing, the claim is dismissed.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Queens

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

12/22/2023

(Dated)

Brian Rudolph

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:
6a2e02101e9a0700ffea5e99dc3c8963

Electronically Signed

Your name: Brian Rudolph
Signed on: 12/22/2023