

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a
East Tremont Medical Center
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No.	17-23-1299-1302
Applicant's File No.	n/a
Insurer's Claim File No.	9WINY11169-02
NAIC No.	29742

ARBITRATION AWARD

I, Amanda R. Kronin, 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: LF

1. Hearing(s) held on 12/21/2023
Declared closed by the arbitrator on 12/21/2023

Rajesh Barua, Esq from Law Offices of Hillary Blumenthal LLC (Hoboken) participated virtually for the Applicant

Joseph Licata, Esq from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$11,567.57**, 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 Assignor, LF, a 38 year old female, was injured as the driver of a motor vehicle involved in an accident on 11/30/22. Following the accident Assignor suffered injuries which resulted in the Assignor seeking treatment. On 2/16/23, the Assignor underwent right shoulder arthroscopy. Herein, Applicant seeks reimbursement of the associated fees. Respondent denied payment based upon a peer review by Pierce Ferriter, MD dated 4/07/23.

The issue presented herein is whether the subject surgery was medically necessary. Additionally, the respondent denied the claim on fee schedule grounds.

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.

The Applicant seeks no-fault reimbursement for the unpaid treatment. To receive payment of a claim, Applicants "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986). In support of its position, Applicant submitted claims totaling \$8,543.28 assignment of benefits form and contemporaneous medical documentation. Accordingly, I find that the Applicant has established its prima facie case for reimbursement.

As a result of the accident, the Assignor sustained injuries. Applicant seeks reimbursement for the treatment provided to the Assignor on 2/16/23. Respondent denied medical necessity for said treatment citing a Peer Review by Dr. Pierce Ferriter, MD dated 4/07/23. Summarily, Dr. Ferriter opines: The patient's MRI showed tendonitis and a tear, but no repair was performed in the operation. Dr. Ferriter determined the medical records did not demonstrate the necessity for surgery. Further, Dr. Ferritier opines that there was inadequate physical therapy. The records indicate the assignor only underwent 8 physical therapy sessions.

In rebuttal, Applicant has submitted a record review rebuttal by Lenoid Shapiro, M.D., and the medical records to support its position. Dr. Shapiro meaningfully refers to and rebuts the assertions of Dr. Ferriter. Dr. Shapiro states: physical therapy and exercise require stretching and movement, often under resistance or load, further delay and more physical therapy would not be expected to provide any additional significant benefit to this

patient. Treatment options had been thoroughly discussed with the patient, including injections. Surgery is an entirely proper treatment option, and it would be against medical standards to not offer it as an option to a patient. Dr. Ferriter has provided an addendum which addresses the points presented in the rebuttal. I find that if the patient would continue to benefit from physical therapy, I fail to understand the rush to surgery. After careful review of the credible relevant evidence submitted by both parties and the arguments raised by respective counsel at the hearing, I am persuaded by the Respondent's peer review report.

I sustain the defense asserted in the denials. Applicant's claim is denied. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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 Suffolk

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

12/23/2023
(Dated)

Amanda R. Kronin

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:
6a34a25b90a7f042f8c900ce7d8c460d

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 12/23/2023