

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mount Vernon Medical PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-23-1285-4424

Applicant's File No. n/a

Insurer's Claim File No. 9TINY08237-02

NAIC No. 29742

ARBITRATION AWARD

I, Cathryn Ann Cohen, 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

1. Hearing(s) held on 12/04/2023
Declared closed by the arbitrator on 12/04/2023

Dino DiRienzo, Esq. from Dino R. DiRienzo Esq. participated virtually for the Applicant

James Scozzari, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,058.15**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$2,726.64.

Stipulations WERE made by the parties regarding the issues to be determined.

Applicant withdrew all claims listed on the AR-1 except fees for upper extremity electrodiagnostic testing performed on April 23, 2020 in the amount of \$1,227.55 and additional fees for an office visit in the amount of \$50.60 and fees for lower extremity electrodiagnostic testing performed on May 4, 2020 in the amount of \$1,448.49.

3. Summary of Issues in Dispute

Applicant seeks \$2,726.64 reimbursement of charges for bilateral upper extremity EMG/NCS testing performed on April 23, 2020 (\$1,227.55) plus additional reimbursement for an office visit billed at \$185.42 and paid at \$136.79, leaving \$50.60 in dispute and bilateral lower extremity EMG/NCS testing performed on May 4, 2020 (\$1,448.49) on Assignor a 60-year-old female driver involved in a motor vehicle accident on August 31, 2019.

Respondent timely denied reimbursement for the upper and lower electrodiagnostic testing based on a peer review by Isandr Dumesh, M.D. dated June 16, 2020, opining the electrodiagnostic testing was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks \$2,726.64 reimbursement of charges for bilateral upper extremity EMG/NCS testing performed on April 23, 2020 (\$1,227.55) plus additional reimbursement for an office visit billed at \$185.42 and paid at \$136.79, leaving \$50.60 in dispute and bilateral lower extremity EMG/NCS testing performed on May 4, 2020 (\$1,448.49) on Assignor a 60-year-old female driver involved in a motor vehicle accident on August 31, 2019. Respondent timely denied reimbursement for the upper and lower electrodiagnostic testing based on a peer review by Isandr Dumesh, M.D. dated June 16, 2020, opining the electrodiagnostic testing was not medically necessary. I have reviewed the documents contained in the ADR Center record of the case maintained by the AAA as of the date of the hearing.

It is well settled that a health care provider establishes a prima facie case of entitlement recover first-party no-fault benefits by submitting proof that the prescribed statutory billing forms, setting forth the fact and the amount of the loss sustained, had been mailed and received and that payment of no-fault benefits was overdue. (*see, Insurance Law Sec. 5106[a]; Mary Immaculate Hosp v. Allstate Ins. Co.*, 5 AD3d 742 [2004]). Respondent's denial(s) indicating receipt of the proof of claim shows that Applicant mailed the proof of claim form(s) to the Respondent (*see, Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co.*, 9 Misc.3d 97). The evidence is sufficient to make out a prima facie case of entitlement to recovery of Applicant's bills.

Once Applicant has established a prima facie case the burden shifts to the insurer to prove that the medical treatment was not medically necessary (*see Citywide Social Work & Psychological Services v Allstate Ins. Co.*, 8 Misc3d 1025A; *A.B. Medical Services, v Geico Ins. Co.*, 2 Misc3d 26). Neither the Insurance Law nor the Regulations define "medical necessity." A review of case law reveals that most courts have evaluated medical necessity based on whether or not services provided were in accord with the generally accepted medical practices. Therefore, to prove

that the services were not medically necessary, at a minimum, lack of necessity must be supported by competent evidence such as an IME or peer review or other proof which sets forth a factual basis and medical rationale for denying the claim. A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards (*see Nir v. Allstate Insurance Company* 7 Misc3d 544).

Upon a showing of lack of medical necessity through a peer review, an Applicant is required to rebut same (*see A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A)).

The peer notes that Assignor sustained injuries in a motor vehicle accident on August 31, 2019 as a restrained driver. On September 16, 2019, Assignor presented Landis Barnes, D.O. with complaints of pain in the right shoulder, neck with bilateral arm pain with numbness and tingling in the fingers and lower back pain with right thigh and leg pain. Physical examination revealed musculoskeletal injuries of the cervical spine, right shoulder, and lumbar spine. Assignor was started on physical therapy, referred for EMG/NCS testing, muscle testing, MRIs of the right shoulder, cervical spine and lumbar spine, specialty consultations and prescribed medications. On October 9, 2019, Assignor presented to Eugene Liu, M.D., Pain Management. Assignor underwent lumbar trigger point injections. On April 23, 2020, Assignor presented to Landis Barnes, D.O. with complaint of neck pain radiating to the right arm. Upper extremity EMG/NCS testing was recommended in order to isolate and delineate a suspected cervical radiculopathy vs peripheral neuropathy, and was conducted on the same day. On May 4, 2020, Assignor was re-evaluated by Dr. Barnes for persistent complaints of neck pain radiating to the right shoulder and lower back pain radiating to the right leg. The impression was cervical and lumbar strain/sprain with multiple levels of herniated and bulging discs, cervical and lumbar radiculopathy, right shoulder strain/sprain with multiple tears. The plan of care included: medications regime; follow up with orthopedist for surgical consultation; follow up with pain management specialist; continuation of physical therapy and chiropractic treatments and trigger point injections; and follow up in four weeks. Cervical injections into the right trapezius was performed on May 6, 2020. Lower extremity EMG/NCS testing was conducted on May 7, 2020.

After a recitation from articles by Gerard Malanga, M.D. about cervical radiculopathy and lumbar radiculopathy, the peer notes that Assignor sustained injuries in the motor vehicle accident of record and was started on conservative therapy following initial evaluation. The disputed testing was performed 7-8 months later. However, the peer's conclusion that the testing was not medically necessary is based on there being, "no indication that any alternative treatment option dependent on the results of the electrodiagnostic testing were considered at that time and that any future therapy decisions were dependent upon the information obtained from the performance of the Upper and Lower Extremities EMG/NCV testing. The diagnoses in this case could have been made clinically, based on the subjective complaints and physical examination findings."

Respondent's evidence fails to set forth sufficient factual basis and medical rationale to establish lack of medical necessity for the upper and lower EMG/NCS testing performed on Assignor. The peer fails to address the medical record showing that despite months of documented physical therapy there continued to be persistent complaints of neck and lower back pain radiating into the upper and lower extremities and documented neurological deficits providing a clinical basis to warrant further investigation by way of this testing. The peer's assertion that there was no treatment option or future therapy decisions dependent on the information obtained by the testing is not accurate as referral for pain management and surgical consultation was being considered. The peer review is the peer's opinion standing alone which does not establish lack of medical necessity which it is Respondent's burden to show. Respondent must demonstrate that based on the clinical presentation including the subjective complaints and objective findings correlated by MRI that performance of this testing was a deviation from standard of care. This the peer does not do. Indeed, fatally missing from the peer review report is any mention of the applicable generally accepted medical/professional standard relative to the clinical presentation and the Applicant's departure therefrom (*see Cambridge Medical, P.C., v. Geico*, (2008 NY Slip Op 50435(U))).

Applicant is entitled to reimbursement for the disputed electrodiagnostic testing. As for the May 4, 2020 visit (code 99215-25), Applicant overbilled. The correct charge is \$148.69 (RVU 13.53 x CF 10.99 = \$148.69; as Applicant's zip code 11710 is region IV). Respondent paid \$136.79. Applicant is owed \$11.90 for this evaluation.

Accordingly, Applicant's request for reimbursement is granted in the amount of \$2,687.94.

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	Amount Amended	Status
	Mount Vernon Medical PC	12/30/19 - 12/30/19	\$16.39	\$16.39	Withdrawn with prejudice
	Mount Vernon Medical PC	01/10/20 - 01/10/20	\$63.79	\$63.79	Withdrawn with prejudice
	Mount Vernon Medical PC	01/15/20 - 01/17/20	\$31.90	\$31.90	Withdrawn with prejudice
	Mount Vernon Medical PC	01/22/20 - 01/22/20	\$63.79	\$63.79	Withdrawn with prejudice
	Mount Vernon Medical PC	01/27/20 - 01/27/20	\$63.79	\$63.79	Withdrawn with prejudice
	Mount Vernon Medical PC	03/02/20 - 03/02/20	\$15.95	\$15.95	Withdrawn with prejudice
	Mount Vernon Medical PC	03/16/20 - 03/18/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	03/20/20 - 03/23/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount				

	Vernon Medical PC	03/27/20 - 03/27/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	04/03/20 - 04/07/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	04/10/20 - 04/13/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	04/17/20 - 04/17/20	\$16.41	\$16.41	Withdrawn without prejudice
	Mount Vernon Medical PC	04/21/20 - 04/21/20	\$16.41	\$16.41	Withdrawn with prejudice
	Mount Vernon Medical PC	03/26/20 - 03/26/20	\$187.39	\$187.39	Withdrawn with prejudice
	Mount Vernon Medical PC	04/23/20 - 04/27/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	04/29/20 - 05/01/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	05/04/20 - 05/06/20	\$32.82	\$32.82	Withdrawn with prejudice
	Mount Vernon Medical PC	05/07/20 - 05/11/20	\$32.82	\$32.82	Withdrawn with prejudice

	Mount Vernon Medical PC	05/13/20 - 05/13/20	\$16.41	\$16.41	Withdrawn with prejudice
	Mount Vernon Medical PC	04/23/20 - 05/06/20	\$1,600.36	\$1,278.15	Awarded: \$1,239.45
	Mount Vernon Medical PC	05/07/20 - 05/07/20	\$1,448.49		Awarded: \$1,448.49
	Mount Vernon Medical PC	09/16/20 - 09/18/20	\$153.96	\$153.96	Withdrawn with prejudice
	Mount Vernon Medical PC	09/21/20 - 09/23/20	\$153.96	\$153.96	Withdrawn with prejudice
	Mount Vernon Medical PC	09/25/20 - 09/25/20	\$76.98	\$76.98	Withdrawn with prejudice
	Mount Vernon Medical PC	09/02/20 - 09/04/20	\$29.48	\$29.48	Withdrawn with prejudice
	Mount Vernon Medical PC	09/09/20 - 09/11/20	\$29.48	\$29.48	Withdrawn with prejudice
	Mount Vernon Medical PC	09/14/20 - 09/14/20	\$14.74	\$14.74	Withdrawn with prejudice
	Mount Vernon Medical	09/16/20 - 09/18/20	\$29.48	\$29.48	Withdrawn with

	PC				prejudice
	Mount Vernon Medical PC	09/21/20 - 09/23/20	\$29.48	\$29.48	Withdrawn with prejudice
	Mount Vernon Medical PC	09/25/20 - 09/25/20	\$14.74	\$14.74	Withdrawn with prejudice
	Mount Vernon Medical PC	10/01/20 - 10/06/20	\$11.15	\$11.15	Withdrawn with prejudice
	Mount Vernon Medical PC	10/06/20 - 10/09/20	\$22.30	\$22.30	Withdrawn with prejudice
	Mount Vernon Medical PC	10/14/20 - 10/16/20	\$15.98	\$15.98	Withdrawn with prejudice
	Mount Vernon Medical PC	10/16/20 - 10/16/20	\$15.98	\$15.98	Withdrawn with prejudice
	Mount Vernon Medical PC	10/26/20 - 10/30/20	\$15.98	\$15.98	Withdrawn with prejudice
	Mount Vernon Medical PC	10/30/20 - 10/30/20	\$15.98	\$15.98	Withdrawn with prejudice
	Mount Vernon Medical PC	12/28/20 - 12/30/20	\$190.90	\$190.90	Withdrawn with prejudice
	Mount				Withdrawn

	Vernon Medical PC	01/04/21 - 01/08/21	\$160.84	\$160.84	with prejudice
	Mount Vernon Medical PC	01/08/21 - 01/12/21	\$140.00	\$140.00	Withdrawn with prejudice
	Mount Vernon Medical PC	01/15/21 - 01/15/21	\$100.28	\$100.28	Withdrawn with prejudice
Total			\$5,058.15		Awarded: \$2,687.94

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/06/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

In accordance with 11 NYCRR 65-3.9(c) interest shall be paid on the claim awarded in the amount of \$2,687.94 from February 6, 2023 the date the arbitration request was received by the AAA.

C. Attorney's Fees

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

In accordance with 11 NYCRR 65-4.6(d) the insurer shall pay Applicant an attorney's fee on the claim awarded in the amount of \$2,687.94.

- 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 New York

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

12/25/2023
(Dated)

Cathryn Ann Cohen

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:
598d824a008729043abc49e646836b92

Electronically Signed

Your name: Cathryn Ann Cohen
Signed on: 12/25/2023