

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Goal Physical Therapy P.C
(Applicant)

- and -

St. Paul Travelers Insurance Co.
(Respondent)

AAA Case No. 17-23-1299-9164

Applicant's File No. 129313

Insurer's Claim File No. 272 PP IIK9534
F

NAIC No. 38130

ARBITRATION AWARD

I, Alina Shafranov, 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 12/19/2023
Declared closed by the arbitrator on 12/19/2023

Edilaine D'Arce, Esq. from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Miriam Granov, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$475.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, Applicant's counsel reduced the total amount claimed to \$114.60 in accord with the New York Workers' Compensation Medical Fee Schedule ("fee schedule"). The Demand for Arbitration is hereby amended accordingly.

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

3. Summary of Issues in Dispute

The Assignor, "ID", a 64-year-old female was involved in a motor vehicle accident as a driver on February 5, 2022. The Assignor sought medical treatment for her injuries

sustained in the MVA, and eventually came under the care of Goal Physical Therapy PC. Applicant seeks reimbursement for physical therapy treatment for date of service 1/11/23. Respondent timely denied reimbursement for the claim based upon the Independent Medical Examination (IME) by Jeffrey Passick, M.D. performed on 11/15/22. As Applicant's counsel amended the claim to properly reflect the fee schedule, the only issue to be decided is whether the continuing treatment was medically necessary post IME cut-off.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dep't. 2004). Respondent's denials are found to be timely.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dist. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008).

Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002).

In support of its contention that further orthopedic treatment was not medically necessary, Respondent relies upon the IME by Jeffrey Passick, M.D. performed on 11/15/22. Dr. Passick reviewed the Assignor's medical records and conducted the examination. The physical examination revealed no objective positive findings. Range of motion testing was within normal limits, and all orthopedic and neurological testing was negative. Dr. Passick diagnosed the Assignor's injuries as resolved and opined that based on the physical examination no further orthopedic treatment was necessary.

I find that this examination report presents a factually sufficient cogent medical rationale in support of Respondent's lack of medical necessity defense. Dr. Passick did not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

To rebut Respondent's IME, Applicant relies on numerous medical records. I find that Applicant has not sufficiently rebutted the contentions of the IME through its own medical records. The only comprehensive medical examinations submitted predate the IME, and therefore do not suffice to refute it. There are no intervening reports in evidence which indicate that the Assignor required treatment for causally related injuries. The absence of a contemporaneous medical exam report documenting the Assignor's course and clinical condition at about the time of the IME is fatal to Applicant's claim. The results of these examinations are insufficient to rebut the IME, as no comprehensive physical examination was performed around the time of the IME. Furthermore, the soap notes are not sufficient to refute the IME. After a careful review of the evidence, I find that I am more persuaded by the detailed and comprehensive IME report of Dr. Passick that the Assignor's injuries had resolved and that further orthopedic care was not medically necessary.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides I find in favor of Respondent.

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 New York

I, Alina Shafranov, 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)

Alina Shafranov

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
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Electronically Signed

Your name: Alina Shafranov
Signed on: 12/25/2023