

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lefferts Drugs Inc
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-22-1265-4575

Applicant's File No. LIP-21585

Insurer's Claim File No. 0674634522
2DA

NAIC No. 29688

ARBITRATION AWARD

I, John Langell, 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 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Lee-Ann Trupia, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Dara Goodman, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,902.50**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in controversy has been amended to 1,528.72 in accordance with the applicable fee schedule.

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

3. Summary of Issues in Dispute

The Assignor is a then 42 year old male who was injured in an automobile accident on 6/11/22. Assignor was provided with topical lidocaine on 6/26/22. Reimbursement for that medication was timely denied by the Respondent based on a peer review. No fee schedule issues have been raised in light of Applicant's amendment. The sole issue for resolution at this hearing is whether the disputed medication was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ECF, and the oral arguments presented by the parties' representatives. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ECF maintained by the American Arbitration Association.

Based on the materials submitted for my review, I find that Applicant's claims were submitted to and received by Respondent, and therefore that Applicant has demonstrated a prima facie case of entitlement to the disputed no fault benefits. See, Viviane Etienne Med. Care, P.C. v. Country Wide Ins. Co., 2013 NY Slip Op. 08430 (2nd Dept. 2013). The burden of production initially lies with the Respondent to establish a prima facie case of lack of medical necessity. Respondent's burden can be satisfied by a peer review report which sets forth both a factual basis and medical rationale for the asserted denial. See, generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

To establish the defense of lack of medical necessity, Respondent relied on the peer review report of Dr. Isandr Dumesh, an Internist. Dr. Dumesh notes that the Assignor did not receive any hospital treatment on the day of the accident. He notes the complaints and findings elicited at the time of the Assignor's initial evaluation on 6/22/22, including headache, neck, and back pain. He says that the Assignor suffered from acute musculoskeletal injuries, for which the standard of care was conservative treatment supplemented by oral medications such as NSAID's and muscle relaxers. He says that additional medications might be necessary in cases where the patient is unable to tolerate the standard medication protocol. He says that lidocaine is not among the first line of treatments for the type of injuries suffered by the Respondent. He says that adverse effects may be associated with the use of topical lidocaine. Dr. Dumesh states that there was no evidence in the present case that treatment with standard medications had been tried and failed prior to the prescription of the presently disputed medication.

I find that Respondent's peer review report has satisfied the applicable burden of production, and that the ultimate burden of persuasion regarding the medical necessity of the disputed medication lies once again with Applicant. See, again, generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., supra.

Applicant has submitted a formal rebuttal to Respondent's peer review report. Applicant's unsigned rebuttal report was ostensibly authored by Youn Ju Lee, the Assignor's prescribing Nurse Practitioner. Mr. Lee notes the Assignor's complaints at the time of his initial evaluation on 6/22/22. He says that "The diagnoses were sprain of the ligaments of the cervical, thoracic and lumbar spine." He says that physical therapy was prescribed, along with MRI's, range of motion testing, Durable Medical Equipment (DME), and the presently disputed lidocaine medication. He says that there were no standard guidelines to direct treatment of the Assignor, and that deference should be afforded to the treating provider. He references the possibility of "spinal cord injury."

He says that the disputed lidocaine ointment was prescribed to ameliorate the Assignor's pain. He says that it is effective for that purpose. He says that failure or intolerance to what he refers to as "standard oral pain medications, such as oral NSAIDs or Acetaminophen and/or muscle relaxants" is not the only indication for the prescription of topical medication.

Based on all the materials before me, and having carefully considered the reports submitted by both parties, I find that the Applicant has failed to credibly rebut the findings and conclusions of the Respondent's peer reviewer. I note that the presently disputed prescription was issued at the time of the Assignor's initial evaluation by the prescribing provider, prior to the administration of any significant conservative treatment. There is no claim that the Assignor was unable to tolerate oral medications, or that prior treatment with oral medications had failed. I note that the 6/22/22 record of treatment does not refer to the administration of any prior medications. I note that the Applicant's rebuttal report itself refers to oral analgesics and muscle relaxers as "standard". I note that the clinical diagnoses referred to by Mr. Lee are substantially consistent with the characterization of the Assignor's injuries offered by Dr. Dumesh. I note that Mr. Lee's reference to the possibility of a "spinal cord injury" is not fully consistent with the underlying records of treatment. I note that the rebuttal report submitted by the Applicant is unsigned. Under all of the facts and circumstances of this case, I am more persuaded by the Respondent's peer review report than by the Applicant's rebuttal report, and so find that the Applicant has failed to prove the medical necessity of the presently disputed medication by a preponderance of the credible evidence.

Any additional issues not referred to hereinabove are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

Accordingly, the Applicant's claim is denied.

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

01/02/2024

(Dated)

John Langell

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:
e5ad147981a5cfb016cb00eeba8a51cf

Electronically Signed

Your name: John Langell
Signed on: 01/02/2024