

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PG Psychological Services PC
(Applicant)

- and -

Maya Assurance Company
(Respondent)

AAA Case No. 17-24-1339-6358

Applicant's File No. n/a

Insurer's Claim File No. 2-231885-01

NAIC No. 36030

ARBITRATION AWARD

I, Anne Malone, 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: EIP

1. Hearing(s) held on 07/15/2024
Declared closed by the arbitrator on 07/15/2024

Roman Kulik, Esq. from Kulik Law Firm, PC participated virtually for the Applicant

Arthur DiMartini, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,208.80**, 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 38 year old EIP reported involvement in a motor vehicle accident on March 11, 2023; claimed related injury and underwent an initial psychiatric diagnostic interview, testing and interpretation and psychotherapy provided by the applicant from March 29, 2023 to April 11, 2023.

The applicant submitted a claim for these psychological services. The respondent made payment for the diagnostic interview and psychotherapy pursuant to the applicable fee schedule. Payment of the claim for psychological testing was timely denied by the respondent based upon a peer review by Michael Rosenfeld, Psy.D. dated June 9, 2023. In response, the applicant submitted a rebuttal dated March 5, 2024 by Peter Gardos, Ph.D. the EIP's treating provider.

The issue to be determined at the hearing is whether the respondent established that the psychological testing at issue was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination 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 specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the psychological testing provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Rosenfeld, who reviewed the medical records of the EIP and noted the injuries claimed and the psychological evaluation provided by Dr. Gardos and the treatment rendered to him. Dr. Rosenfeld considered possible arguments and justification for the need for the psychological services at issue and determined that they were not warranted under the circumstances presented.

Dr. Rosenfeld submitted a report in which he noted that the EIP was diagnosed with physical injuries related to trauma and that brief integrative psychotherapy was recommended. He acknowledged that a diagnostic interview was necessary and appropriate to evaluate the EIP for any possible disorder related to the subject accident. He discussed the standard of care for psychological services for

this EIP and determined that only the diagnostic interview met these criteria. It was his opinion that it is the main tool used by psychologists to determine a diagnosis and treatment plan.

Dr. Rosenfeld stated that psychological testing can be useful under certain circumstances, to augment the initial interview but was not necessary for this EIP whose case would be considered straightforward and did not require additional testing particularly when the tests consisted on the EIP completing symptom checklists, which information would have been available to the psychologist during the clinical interview. Since the testing was not necessary the interpretation of the results would not be necessary.

It was Dr. Rosenfeld opinion that the testing would not have altered the diagnosis or treatment plan.

Dr. Rosenfeld supported, with relevant medical literature, his opinion that the psychiatric diagnostic interview and the psychotherapy provided to the EIP was medically necessary but that the testing was not.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the psychological testing at issue were not indicated for this EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish that the services at issue were medically necessary.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Gardos, the treating psychologist, who disagreed with the conclusions reached by Dr. Rosenfeld and discussed in detail the injuries sustained by the EIP, the psychological symptoms which he presented and the treatment rendered to him.

Dr. Gardos determined that psychological testing be performed due to significant deterioration in the EIP's psychological functioning which might impede his recovery. Therefore, he performed five differentdiagnostic tests and diagnosed various psychological disorders.

Dr. Gardos stated that the testing provided was in accordance with generally accepted standards of care in the field of psychology. He supported his opinion that this testing met these criteria with a section of the Americans with Disabilities Act, which stated that generally, medically necessary services "must be based on an individualized assessment of the individual and furnished in accordance with an individualized treatment plan."

He further discussed the appropriate uses of psychological testing according to the American Psychiatric Press. Dr. Gardos determined that positive findings in the patient's clinical examination and history demonstrated possible psychological abnormalities which needed more evaluation and that testing is useful in this regard. He concluded that the tests performed on this patient

together with the face to face evaluation and mental status exam provide a more accurate picture of his overall psychological condition which enables the treating provider to properly treat the patient.

The applicant did not submit a rebuttal which meaningfully refers to and rebuts the findings of Dr. Rosenfeld related to this particular EIP and the medical reports submitted do not contradict the assertions made by him. Specifically, Dr. Gardos did not describe the testing which was performed on the EIP and did not respond to Dr. Rosenfeld's assertion that this testing was essentially a check list filled out by the EIP. It was Dr. Rosenfeld's opinion that this information should have been discussed with the EIP in the initial diagnostic interview.

Under these circumstances, the applicant has failed to meet the burden of persuasion in rebuttal.

Based on the foregoing, I find that the respondent has established that the psychological testing at issue was not medically necessary.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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 CT
SS :
County of Fairfield

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

07/18/2024
(Dated)

Anne Malone

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:
02bef7876a9aad277604894b6cd564e8

Electronically Signed

Your name: Anne Malone
Signed on: 07/18/2024