

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

ASM Diagnostic Inc.
(Applicant)

- and -

Electric Insurance Company
(Respondent)

AAA Case No. 17-22-1274-8407

Applicant's File No. DK22-309996

Insurer's Claim File No. 20220706A17

NAIC No. Self-Insured

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 06/27/2024
Declared closed by the arbitrator on 06/27/2024

Jennifer Raheb, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Todd Hyman, Esq. from Carman, Callahan & Ingham, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,009.14**, 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 33 year old EIP reported involvement in a motor vehicle accident on July 5, 2022; claimed related injury and underwent miscellaneous nerve testing on August 17, 2022 and duplex scan of extracranial arteries provided by the applicant on August 24, 2022.

The applicant submitted a claim for these medical services, payment of which was denied by the respondent based on the peer review by Stuart Stauber, M.D. dated December 27, 2022. In response, the applicant submitted a rebuttal dated May 20, 2024 by Hong Pak, M.D. and Dr. Stauber submitted an addendum dated June 13, 2024.

The issue to be determined at the hearing is whether the respondent established that the medical services provided to the EIP were 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.

In order 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.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

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.)

In support of its contention that the medical services provided by the applicant on August 17, 2022 and August 24, 2022 were not medically necessary, respondent relies upon the report of the peer review by Dr. Stauber who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to him. Dr. Stauber considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

Dr. Stauber discussed the each of type of diagnostic studies provided to the EIP and his reasons for finding that each was not medically necessary at the time they were provided. He specifically discussed purposes of each study and determined

that none were necessary based on the diagnoses for the injuries sustained by the EIP. It was Dr. Stauber's opinion that the EIP did not exhibit any of the symptoms for which each of the studies would be necessary.

He supported, with relevant medical literature, his opinion that the various testing/studies provided to the EIP was not medically necessary.

Respondent has factually demonstrated that the services at issue were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion, pursuant to Bronx Expert Radiology, P.C., supra.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Pak who reviewed the EIP's medical records and disagreed with the conclusions reached by Dr. Stauber. He noted that the EIP injured his lower back as a result of the subject accident and discussed each of the studies performed and the reasons that he believed they were necessary. He cited relevant medical literature to support the general benefits and usefulness of each study provided.

In response to the rebuttal, Dr. Stauber noted that Dr. Pak indicated that the EIP was diagnosed with headache, dizziness and giddiness and a recommendation for unspecified conservative treatment was made. Dr. Pak did not mention who referred the EIP for the VNG, Doppler and Duplex and SSR scans of the upper and lower extremities. He also did not indicate why these studies were necessary for the EIP to proceed with a course of conservative treatment.

Dr. Stauber noted that the EIP did not have a neurological evaluation with documentation of any head trauma or loss of consciousness. He concluded that there was no documented clinical reason that the SSR testing would be initiated as it relates to the subject accident.

After a review of all of the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented in the peer review and addendum by Dr. Stauber and the rebuttal of Dr. Pak on behalf of the applicant. I find that the submissions of Dr. Stauber were more persuasive in this instance.

Based on the foregoing, I find that the respondent has established that the diagnostic testing/studies provided on August 17, 2022 and August 24, 2022 were 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.

07/21/2024

(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:
0d99a713c753599dad9da1492cb8ba05

Electronically Signed

Your name: Anne Malone
Signed on: 07/21/2024