American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Evan Donin, NP (Applicant)	AAA Case No.	17-24-1335-0539
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	272 PP IIK7120 002
The Standard Fire Insurance Company (Respondent)	NAIC No.	19070

ARBITRATION AWARD

I, Thomas Awad, 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: KS

1. Hearing(s) held on 07/24/2024
   Declared closed by the arbitrator on 07/24/2024

   Marc Schwartz from Buitrago & Associates, PLLC participated virtually for the Applicant

   Amber Brogdan from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$792.53**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount at issue is hereby amended to $491.27. This represents claims for the following: 9/11/23-$44.80; 10/9/23-$44.80; and 11/15/23-$401.67.

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

   At this matter's hearing, the parties stipulated to the following facts and/or legal issues:

   1. The Applicant submitted the disputed overdue claims for $491.27 to the Respondent. As a result, it establishes its prima facie entitlement to an Award for said claims and the services are presumed to be medically necessary. See *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.,* 25 N.Y.3d 498 (2015); and

2. The Respondent's denials of claims were timely issued and preserved a defense of lack of medical necessity based on a physical examination (IME) conducted by Dr. Reuben Burshtein dated 3/28/23.

3. Summary of Issues in Dispute

The Assignor, KS, a 40 year old female, was involved in a motor vehicle accident on 10/29/21. At issue in this case is $491.27 for psychological treatment performed on 9/11/23, 10/9/23 and 11/15/23. Respondent denied the claim for treatment on 11/15/23 based upon the independent medical exam (IME) of Dr. Reuben Burshtein dated 3/28/23. The issue presented is whether the services are medically necessary and whether they comply with the fee schedule.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

The parties stipulated to the Applicant's prima facie case and that the respondent timely denied the bills. Once the prima facie case has been established, the burden then shifts to the Respondent to establish that the disputed services were not medically necessary. See, *Citywide Social Work & Psy. Servs., PLLC v. Allstate Ins. Co.,* 8 Misc. 3d 1025A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim. See, *Healing Hands Chiropractic, P.C. v. Nationwide Assur. Co.,* 5 Misc. 3d 975 (2004).

The Assignor, KS, a 40 year old female, was involved in a motor vehicle accident on 10/29/21. At issue in this case is $491.27 for psychological treatment performed on 9/11/23, 10/9/23 and 11/15/23. Respondent denied the claim for treatment on 11/15/23 based upon the independent medical exam (IME) of Dr. Reuben Burshtein dated 3/28/23.

IME

The Applicant submits a claim in the amended amount of $401.67 for psychological services rendered on 11/15/23 which was denied on the IME of Dr. Burshtein.

A denial claiming lack of medical necessity must be supported by a peer review, IME report or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. See *Healing Hands Chiropractic, P.C. v.*

National Assurance Co., 5 Misc3d 975; *Citywide Social Work, et al. v. Travelers Indemnity Co.,* 3 Misc3d 608. See also *Amaze Medical Supply, Inc. v. Eagle Insurance Co.,* 2 Misc3d 128(A). The Respondent must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. See *Vladimir Zlatnick, M D. P.C. v. Travelers Indem. Co.,* 12 Misc.3d 128(A) (App Term 1 Dept. 2006).

My review of Dr. Burshtein's IME report reveals a neurological examination that was thorough and completely normal. The report diagnosed resolved cervical, thoracic and lumbar sprain/strain. The report also noted an unremarkable neurological exam. Dr. Burshtein opines that there is no need for further neurologic treatment, physical therapy, diagnostic testing, household help, special transportation, or durable medical equipment/supplies from a neurologic perspective.

Applicant's counsel objects to the IME and notes that the treatment at issue involves psychological evaluation and counseling. Applicant argues that the neurological IME does not evaluate the patient's psychological status and does not opine that psychological services are not medically appropriate. As a result, the IME cannot form the basis of a denial of the treatment in dispute.

I have reviewed the Applicant's medical records for the treatment in dispute. It is clear from the records that the treatment related to the psychological condition of the Assignor and did not focus on back and neck sprains. The history section of the 11/15/23 report notes her mood to include anxiety/dysphoric symptoms. Thought content is noted to be "no psychosis, patient denied auditory or visual hallucinations, denies/SI/HI, though denies plan, intent, or means to kill self, as well as A/V hallucinations and delusions." The diagnostic impression was Generalized Anxiety Disorder, Major Depressive Disorder, Post-concussion Syndrome, ADHD and Unspecified.

While the medical report addresses the physical condition of the patient, the main focus and discussion is the patient's emotional condition. The IME report does not address Generalized Anxiety Disorder, Major Depressive Disorder, Post-concussion Syndrome or ADHD. Moreover, it fails to specify that further psychological services are not medically necessary.

After reviewing the totality of the credible and admissible evidence, and hearing the arguments of the parties, I find that the Respondent's IME to be lacking in credibility and does not sustain the Respondent's burden of proof with regard to the lack of medical necessity herein.

Fee Schedule

The Applicant amended its bills for treatment rendered on 9/11/23 and 10/9/23 to $401.67 for each date of treatment. The Respondent previously paid $356.87 for each date of service which results in an amount in dispute of $44.80 for each date of service.

An insurer has the burden of showing as a matter of law that said claims reflect the incorrect amount for services provided. *Jamil M. Abraham, M.D., P.C. v. Country Wide Ins. Co.,* 3 Misc. 3d 130[A], 787 N.Y.S.2d 678 (App Term 2d & 11th Jud. Dist. 2007); *New Era Massage Therapy, P.C. v. Progressive Cas. Ins. Co.,* 2009 N.Y. Misc. Lexis 2554, 242 N.Y.L.J. 2 (Sup Ct. Queens Co. June 26, 2009).

I have taken judicial notice of the New York State Workers' Compensation fee schedule. *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2nd Dept.,2009).

The Respondent relies on its EOB which states that since the Applicant is a nurse practitioner and the fee schedule amount is 80% of the physician's fee. The Applicant contends that it accounted for the 80% when the claim was amended at the hearing.

I am persuaded that the Applicant's calculation is accurate.

Conclusion

The Applicant is awarded the following:

9/11/23-$44.80

10/9/23-$44.80

11/15/23-$401.67

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
	Evan Donin, NP	**11/15/23 - 11/15/23**	**$502.09**	**$401.67**	**Awarded: $401.67**
	Evan Donin, NP	**10/09/23 - 10/09/23**	**$145.22**	**$44.80**	**Awarded: $44.80**
	Evan Donin, NP	**09/11/23 - 09/11/23**	**$145.22**	**$44.80**	**Awarded: $44.80**
Total			**$792.53**		**Awarded: $491.27**

B. The insurer shall also compute and pay the applicant interest set forth below. 02/02/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 11 NYCRR 65-4.6(d).

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 Nassau

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

07/28/2024
(Dated)

Thomas Awad

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:
26b8abd07f880bacec7a1c773bfe20f0

Electronically Signed

Your name: Thomas Awad
Signed on: 07/28/2024