

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Leviathan Wellness PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1338-3651
Applicant's File No.	153820
Insurer's Claim File No.	8758181940000001
NAIC No.	22055

ARBITRATION AWARD

I, Theresa A. Kelly, 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, VF

1. Hearing(s) held on 07/01/2024
Declared closed by the arbitrator on 07/01/2024

John Faris, Esq. from Law Offices of Eitan Dagan participated virtually for the Applicant

Chelsea Waller, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$701.01**, 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 Assignor, JVF, a 37-year-old male was injured as the driver of a motor vehicle involved in an accident on 10/5/2023. Following the accident, the Assignor complained of pain to among other areas, his left knee. Thereafter, the Assignor underwent surgery on his left knee. The claim for the Physician Assistant bill was timely denied based on a peer review of Dr. Ronald Mann dated 2/15/2024.

At issue is whether the surgery was medically necessary.

4. Findings, Conclusions, and Basis Therefor

The case was decided on 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. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Applicant establishes "a prima facie showing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dep't. 2004). In the case at bar, Applicant has met this burden.

Once Applicant has established a prima facie case, the burden is on the insurer to prove that the medical treatment was not medically necessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dep't. 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term 2nd & 11th Jud Dist 2003). 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 determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140). 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 generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1 Dept. 2006).

The civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review 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 medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

In support of its defense that the surgery for the Assignor's left knee performed on 1/16/2024 was not medically necessary, Respondent submits the peer review report of Dr. Ronald Mann dated 2/15/2024. Dr. Mann bases his peer report opinion on the medical records he reviewed and the citations to the generally accepted standard in the orthopedic community.

According to Dr. Mann, "Studies have established that a period of non-operative treatment is valid before undergoing surgery. Evidence for this is based on clinical trials where patients have nonspecific clinical and radiological findings. A trial of conservative treatment before arthroscopy was only mandatory. Where conservative treatment was undertaken before surgery but without adequate improvement, subsequent partial meniscectomy was effective." As per the medical records provided, the claimant did not receive cortisone injections to the left knee. It is not clear why an important treatment modality such as cortisone injections were overlooked for treating the left knee symptoms. Corticosteroids are anti-inflammatory drugs that work by preventing collagen production. The injection shuts down collagen-producing cells in the tendon or joint; this action suppresses inflammation and calms nerves, indirectly reducing pain."

Furthermore, Dr. Mann indicated that the findings on MRI were, as follows:

Horizontal intrameniscal tear in the posterior horn of the medial meniscus. Horizontal intrameniscal tear in the posterior horn of the lateral meniscus. ACL appears thickened and heterogeneous consistent with a sprain, in an appropriate clinical setting. Lateral collateral ligament appears thickened and heterogeneous consistent with a sprain, in an appropriate clinical setting. Mild joint effusion consistent with trauma or synovitis, in an appropriate clinical setting. Anterior subcutaneous soft tissue swelling and edema consistent with recent trauma or bursitis, in an appropriate clinical setting. These findings could be successfully treated with conservative therapy and often improves over time with treatment. So surgery usually is not indicated. No such findings were noted in the MRI report of the left knee which would justify the recommendation of left knee arthroscopy.

Dr. Mann concluded his opinion stating, "Though the claimant complained of mechanical symptoms, adequate physical therapy for 3 to 6 months along with cortisone injection would reduce mechanical symptoms in addition to providing pain relief. There is no evidence that the claimant completed a full proper course of conservative management before considering the left knee arthroscopy. The treating physician should have considered an adequate attempt at non-operative treatment to improve the functionality and quality of life of the claimant and if there were no improvements with adequate conservative treatment, then the left knee arthroscopy should have been considered. Thus, the left knee arthroscopy was not medically necessary in this case."

I find the peer review of Dr. Mann satisfied the burden of proof of lack of medical necessity for the left knee surgery, shifting the burden of persuasion to Applicant to demonstrate the surgery was necessary.

Applicant's evidence included the rebuttal of the treating doctor, Dr. Milan Sen. According to Dr. Sen, the surgery was medically necessary.

The patient was suspected to have meniscal tear. Any amount of conservative treatment would not heal the tear and would never bring the patient to the pre-accident state. Arthroscopic surgery was mainly used to inspect, diagnose, and was also used as the most predictable way of treatment as well as to relieve painful symptoms. Left Knee arthroscopy would provide the greatest chance of definitive treatment to the patient.

Dr. Sen states that conservative treatment can only reduce the symptoms it would not heal the meniscal tears. Also, injections would not be beneficial for several reasons. One, they do not repair anything (especially tears) within the joint and only sometimes temporarily mask some of the symptoms. Injections are not efficacious in providing reliable pain relief nor in improving range of motion. Secondly, injections also carry the risk of detrimental effects on the tendon and bone and decreased potential for healing after repair if one is necessary.

After reviewing all the evidence and listening to oral arguments, I find that Respondent set forth a factual basis and medical rationale for denying the surgery.

The physical examination of the left knee revealed tenderness upon palpation to the anterior, medial, and lateral joint lines, decreased range of motion, no swelling, no color changes, no instability to AP and rotational stress, positive McMurray and Apley's compression test, negative Varus and Valgus Stress test, Lachman sign, Anterior Drawer, Posterior Drawer sign, Inhibition sign, and 5/5 Quad strength. The MRI report of the left knee was reviewed during this visit. The assessment was left knee medial and lateral meniscus tear. The treatment plan included a recommendation for left knee arthroscopy.

As noted by Dr. Mann, the MRI findings failed to document evidence of a complete tear. I also agree with Dr. Mann that Assignor did not undergo an adequate course of conservative treatment prior to the recommendation for the right knee arthroscopy. Based upon the foregoing, and after reviewing the evidence, I find that Applicant has failed to submit sufficient credible evidence to rebut the peer review of Dr. Mann. I am persuaded by the opinion of Dr. Mann, and his rationale, and find that Applicant has failed to establish the medical necessity for the left knee arthroscopy on 1/16/2024

Accordingly, Applicant's claim is denied in its entirety.

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 Suffolk

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

07/31/2024
(Dated)

Theresa A. Kelly

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:
8f7b799dbd0804997141ccedb0ba654d

Electronically Signed

Your name: Theresa A. Kelly
Signed on: 07/31/2024