

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

University at Buffalo Neurosurgery Inc (Applicant)	AAA Case No.	17-23-1327-9706
- and -	Applicant's File No.	00124708
	Insurer's Claim File No.	263 PP H2C9601 002
Travelers Personal Insurance Company (Respondent)	NAIC No.	38130

ARBITRATION AWARD

I, Tara Maher, 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 07/29/2024
Declared closed by the arbitrator on 07/29/2024

Justin Rosenbaum, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Theresa Carrubba, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$975.19**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the amount in dispute conforms to the proper fee schedule.

3. Summary of Issues in Dispute

The subject claim seeks reimbursement for an ablation to the right hip, lumbar injection and office visits provided to the assignor, MH, a 59-year-old female between 8/20/19 and 9/14/20 following her involvement in a motor vehicle accident on 2/15/17. The issue presented is whether respondent has sustained its defense predicated on lack of

medical necessity per the results of an IME performed by Dr. Weinstein on 3/2/20 with a termination effective 3/16/20 and the peer review of Dr. Hassan. Applicant counters with a formal rebuttal by Dr. Siddiqui.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the ADR case center record maintained by the American Arbitration Association. The findings below are based upon documents reviewed in the case record and the parties' respective positions at the hearing.

It is well settled that the health care provider establishes its prima facie entitlement to no-fault benefits under article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 AD3d 742(2 Dept. 2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc. 3d 128A, 784 NYS2d 918, 2003 N.Y. Slip Op 5170IU (App. Term, 2d & 11th Jud. Dist.]. I find that applicant has met its prima facie burden.

The burden now shifts to the insurer to show lack of medical necessity. See *Elm Medical P.C. v. American Home Assurance Co.*, 2003 Slip Op 51357U 2003 N.Y. Misc. Lexis 1337 [Civ. Ct., Kings Co., 2003]; *Fifth Avenue Pain Control Ctr. V. Allstate Ins. Co.*, 196 Misc. 2d 801, 766 NYS2d 748 [Civ. Ct., Queens Co., 2003].

Upon a showing of lack of medical necessity through a peer review, an applicant is required to rebut same. See *A Khodadadi Radiology P.C. v. N.Y. Central Mutual Fir Ins. Co.*, 16 Misc. 3d 131(A), 841 N.Y.S.2d 824 (table), 2007 N.Y. Slip Op 51342(U), 2007 WL 1989432 (App. Term 2d & 11 Dist. July 3, 2007).

I have reviewed the submissions of both parties and considered the oral arguments of the respective counsel during the hearing of this matter. Assignor, MH, is a 59-year-old female involved in a motor vehicle accident on 2/15/17. As a result of the accident, assignor sustained multiple injuries including to her cervical and lumbar spines, and right hip. Thereafter, she began a course of conservative care consisting of chiropractic treatment and physical therapy and underwent a right hip ablation, injections, and lumbar injections.

Dr. Weinstein performed a review of the assignor's medical treatment records and a comprehensive examination. The salient portions of the examinations revealed assignor complained of pain in the examined areas. The examination documents Active cervical flexion is 40° (0-50°) with pulling in the right neck. Active cervical extension is 50° (0-60°). Active right cervical rotation is 60° (0-80°) with dizziness. Active left cervical rotation is 60° (0-80°) with pulling in the right neck. Active right cervical lateral bending is 30° (0-45°) with pulling in the left neck. Active left cervical lateral bending is 25° (0-45°) with pulling in the right neck. Active right shoulder abduction is 170° (0-180°). Active right shoulder flexion is 150° (0-180°). There is full internal and external rotation at the right shoulder. Active left shoulder abduction is 180° (0-180°).

Active left shoulder flexion is 170° (0-180°). Lumbar flexion is 60° (0-60°) with pulling in the lower back. Active lumbar extension is 25° (0-25°). Active right lumbar lateral bending is 25° (0-25°) with pulling in the left lower back. Active left lumbar lateral bending is 25° (0-25°) with pulling in the right lower back. Passive internal and external rotation at the right hip causes right groin pain. Provocative testing of the right hip was positive as the examiner noted Right Faber testing causes right groin pain.

Based upon his assessments, Dr. Weinstein diagnosed assignor with lumbosacral sprain/strain superimposed upon pre-existing degenerative disc disease at L4/5 and cervical sprain/strain imposed upon pre-existing cervical degenerative changes. He concluded the claimant's diagnoses of lumbosacral sprain/strain superimposed upon pre-existing degenerative disc disease at L4/5, and cervical sprain/strain imposed upon pre-existing cervical degenerative changes are causally related to her motor vehicle accident on 2/15/17. The injuries occurred as a result of the transfer of forces to the neck and lumbosacral area as a result of the motor vehicle collision. The medical documentation and examination support a causal relationship between the motor vehicle accident on 2/15/17 and the claimant's injuries to the cervical spine and lumbosacral spine. There is no medical necessity for any additional right hip treatment as it relates to the motor vehicle accident on 2/15/17. The claimant sustained a lumbosacral sprain/strain. Injections and radiofrequency ablation of the sacroiliac joints were medically reasonable and appropriate. There is no indication for any additional right hip joint injections. At the present time there is no indication for any additional right or left sacroiliac joint pain management procedures. There is no medical necessity for any additional diagnostic testing involving the right hip, cervical spine, or lumbosacral spine. There is no medical necessity for any additional physical therapy for the cervical spine, lumbosacral spine, or right hip.

Dr. Weinstein diagnosed assignor with sprains and strains of the lumbar spine and right hip, however, Dr. Weinstein failed to opine as to whether the injuries were resolved. In addition, the positive Faber test of the right hip is documented. He opined that the right hip ablation and lumbar injection were medically reasonable and appropriate.

Peer of Dr. Hassan

Dr. Hassan reviewed the medical records of the claimant and opined that the 2/19/19 hip ablation injection gave the assignor only 2 weeks of relief. He opined there is no medical indication to repeat the same procedure if it did not provide long term pain relief. Therefore, he concluded the hip ablation performed on 8/20/19 was not medically necessary. Dr. Hassan cited to medical authority where appropriate in support of his opinion.

Applicant countered with the medical treatment records including the 4/19/19 exam of Dr. Wong and the rebuttal of Dr. Siddiqui. Dr. Siddiqui argued Dr. Hassan makes no distinction between a sacroiliac joint injection and a sacroiliac joint radiofrequency ablation, which is in fact the procedure in dispute. They are two very distinct procedures and furthermore, the radiofrequency ablation is the natural follow-up to the injection. To confuse the two is simply not accurate. The patient underwent a SI joint injection on 2/15/19 which provided her with relief and confirmed the diagnosis of sacroiliitis.

Therefore, she was an excellent candidate to undergo SI joint RFA. Please refer to the 4/19/19 medical notes which clearly state, "Plan: In regard to her low back pain, Margarita has had two sacroiliac joint injections, each providing her with 75 percent improvement, however the second injection only provided her with two weeks of relief. She was seen in evaluation with Dr. Moreland but is not interested in sacroiliac fusion at this time. Therefore, she is a candidate for radiofrequency ablation of her right sacroiliac joint..." Contrary to Dr. Hassan's assertion, the 8/20/19 procedure was not a repeat injection but rather a radiofrequency ablation, which according to the literature, is typically the next step in treating sacroiliitis. Dr. Hassan further asserts, "as per Dr. Wong examination, on 4/19/2019, the presence of groin pain or absence of pain above the level of L5 were not shown. Accordingly, it is unclear if the claimant's buttock pain as generated from the sacroiliac joint and if it required performing ablation/injection procedure." However, please note, the patient presented on 4/19/19 with stabbing low back pain which could radiate into the bilateral buttocks, along with difficulty standing for long periods of time, getting in and out of cars, going up and down the stairs and changing from sitting to standing. Upon physical examination, she exhibited tenderness to palpation of the bilateral sacroiliac joints, as well as positive Fortin Finger and Faber's test - both indicative of sacroiliac joint dysfunction. He therefore failed to understand how Dr. Hassan could question the diagnosis of sacroiliitis.

The necessity of the treatment is an issue of fact. Upon careful consideration of the evidence, I find as a matter of fact that the credible evidence establishes that assignor remained symptomatic and in need of further care in the post-IME denial period claimed. I further find I am not persuaded by the opinions of Dr. Weinstein or Dr. Hassan in light of the positive findings in the medical records including documented pain and limitations in the ranges of motion noted in the assignor's cervical and lumbar spines and right hip and ongoing symptomology refractory to prior pain management and conservative treatment. In as much as the applicant has met its shifted burden of persuasion in rebuttal, an award shall be issued in favor of the applicant.

Accordingly, applicant is awarded the claim in the amount of \$975.19.

This decision is in full and final settlement of all claims presently pending before this arbitrator.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of hearing.

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	Status
	University at Buffalo Neurosurgery Inc	09/14/20 - 09/14/20	\$74.79	Awarded: \$74.79
	University at Buffalo Neurosurgery Inc	07/16/20 - 07/16/20	\$173.51	Awarded: \$173.51
	University at Buffalo Neurosurgery Inc	06/10/20 - 06/10/20	\$74.79	Awarded: \$74.79
	University at Buffalo Neurosurgery Inc	08/20/19 - 08/20/19	\$652.10	Awarded: \$652.10
Total			\$975.19	Awarded: \$975.19

B. The insurer shall also compute and pay the applicant interest set forth below. 12/07/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of filing for all timely denied claims and from the 30th day of presentment of the bill to the carrier for all claims not processed within the statutory 30-day time period. Interest on all awarded claims is to be paid at the rate of two percent per month, not compounded, on a pro-rata basis.

C. Attorney's Fees

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

Having been filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 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 Suffolk

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

08/02/2024
(Dated)

Tara Maher

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:
a08af5f19a2e6d254bf25b2c8efecaea

Electronically Signed

Your name: Tara Maher
Signed on: 08/02/2024