American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Prompt Medical Spine Care, PLLC (Applicant)	AAA Case No.	17-24-1336-0035
	Applicant's File No.	3181130
- and -	Insurer's Claim File No.	32-08B0-09V
	NAIC No.	25178
State Farm Mutual Automobile Insurance Company (Respondent)		

ARBITRATION AWARD

I, Eileen Hennessy, 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-M.L.

1. Hearing(s) held on 07/23/2024
   Declared closed by the arbitrator on 07/23/2024

   Justin Skaferowsky from Israel Purdy, LLP participated virtually for the Applicant

   Shelly Heffez from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,056.42**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulated and agreed that (i) Applicant has met its prima facie burden by submitting evidence that payment of no-fault benefits is overdue, and proof of its claims were mailed to and received by Respondent and (ii) Respondent's denials of the subject claims were timely issued.

3. Summary of Issues in Dispute

   The record reveals that the Assignor-M.L., a 61-year-old male, claimed injuries as the driver of a motor vehicle involved in an accident which occurred on 6/11/2020. Applicant billed for an office visit conducted on 12/8/2023 and a lumbar endoscopic

rhizotomy conducted on 12/14/2023. Respondent denied the claim based on lack of medical necessity as per the results of the Independent Medical Evaluations (IME) performed by Dr. Vijay Sidhwani, M.D., effective 8/25/2021, and by Dr. Pierce Ferriter, M.D., effective 8/23/2022. The issues to be determined are 1) whether Applicant's claim is precluded by the doctrine of collateral estoppel, and if not, 2) whether the services are medically necessary?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for an office visit and a lumbar endoscopic rhizotomy. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

COLLATERAL ESTOPPEL

The doctrines of res judicata and collateral estoppel are fully applicable to arbitration proceedings. *See* American Ins. Co., v. Messinger, 43 N.Y.2d 184, 401 N.Y.S.2d 36 (1977). Collateral estoppel is a rule of justice and fairness which mandates that issues once tried should not be re-litigated by a party in a subsequent proceeding who had been afforded a full and fair opportunity to contest the issues raised in a prior proceeding. Commissioners of State Ins. Fund v. Low, 3 N.Y.2d 590, 595, 170 N.Y.S.2d 795, 800 (1958). One of the primary purposes of the doctrine of res judicata is grounded in public policy concerns intended to insure finality, prevent vexatious litigation and promote judicial economy. Matter of Hodes v. Axelrod, 70 N.Y.2d 364 (1987); Matter of Reilly v. Reid, 45 N.Y.2d 24 (1978). Two requirements must be met before collateral estoppel can be invoked. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling (*see,* Gilberg v. Barbieri, 53 N.Y. 2d 285, 291 [1981]). The party seeking the benefit of collateral estoppel must demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party (*see*, Gilberg v. Barbieri, *supra.*). The party to be precluded from re-litigating the issue bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination. Buechel v. Bain, 97 N.Y. 2d 295, 303 (2001). Under New York's transactional approach, as a general rule, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." Parker v. Blauvelt Volunteer Fire Co., Inc., 93 N.Y.2d 343, 347 (1999) *citing* O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981).

The policies underlying the application of res judicata and collateral estoppel are avoiding relitigation of a decided issue and the possibility of an inconsistent result. Notably, the preclusive effect, if any, to be afforded to an earlier decision in a subsequent arbitration proceeding is for the arbitrator of the second proceeding to determine. City School Dist. v. Tonawanda Education Assoc., 63 N.Y.2d 846, 482 N.Y.S.2d 258 (1984).

Legal Standards for Determining Medical Necessity

Once applicant has established a prima facie case, the burden then shifts to respondent to establish a lack of medical necessity with respect to the benefits sought. *See*, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc3d 1025A (2005). A denial premised on lack of medical necessity must be supported by competent evidence such as an IME, peer review or other proof which sets forth a factual basis and medical rational for denying the claim. *See*, Healing Hands Chiropractic , P.C. v. Nationwide Assur. Co., 5 Misc3d 975 (2004).

In evaluating the medical necessity of services with proof of each party, particularly where the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary. The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009), *See also* Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. *E.g.*, Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008). Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 4(App. Term 2d & 11th Dists. Sept. 29, 2006). For an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, respondent's evidence. *See*, Yklik, Inc. v. Geico Ins. Co., 28 Misc3d 133A (2010). The case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts. Moreover, the Appellate Term, 2d, 11th & 13th Dists., stated: "Assuming the insurer is successful in satisfying its burden, it is ultimately plaintiff who must prove, by a preponderance of the evidence, that the services or supplies were medically necessary." Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 (App. Term 2d, 11th & 13th Dists. 2012). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied, as the ultimate burden of proof on the issue of medical necessity lies with the claimant. *See* Insurance Law § 5102; AJS Chiropractic , P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002); Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994).

Application of Legal Standards

I note the validity of denials based upon negative IME findings have been recognized by several Courts. *See e.g.*, Innovative Chiropractic s P.C. v. Mercury Ins. Co., 25 Misc3d 137 (App. Term 2d & 11th Dists. 2009); B.Y. M.D., P.C. v. Progressive Casualty Ins. Co., 26 Misc3d 125 (App. Term 9th & 10th Dists. 2010). An IME report can be the basis of a termination of benefits if ultimately found to be persuasive. Whether an IME report is persuasive, and meets the carrier's burden is a factual decision, which must be rendered on a case-by-case basis. Therefore, when, as here, an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for the claim's rejection, the presumption of medical necessity and causality attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute the IME findings and prove the necessity of the disputed services and the causal relationship between the injuries and the accident. *See*, CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 87 (App. Term 1st Dept.); A.Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc. 3d. 131 (A) (App Term 2d Dept.).

Pursuant to Respondent's denials, which were submitted by Applicant to the record, the claim in dispute was denied based on the Pain Management/Physical Medicine and Rehabilitation ("PMR") examination report of Vijay Sidhwani, M.D., conducted on 7/26/2021 and the orthopedic examination report of Pierce Ferriter, M.D., conducted on 7/12/2022.

I find that Respondent's lack of medical necessity defense is preserved based on the uncontested timely and legally sufficient denials asserting that defense.

Therefore, the issue is whether Respondent met it burden of proof in establishing that defense.

While not raised in the hearing, my review of the ECF indicates that Arbitrator Heidi Obiajulu addressed Respondent's defense in the linked case of *Prompt Medical Spine Care, PLLC and State Farm Mutual Automobile Insurance Company*, AAA Case No.: 17-23-1284-5137, heard on 8/7/2023. The linked case involved the same parties, the same Assignor, the same motor vehicle accident, and the same defense of lack of medical necessity predicated on the IME of Pierce Ferriter, M.D., which was conducted on 7/12/2022 as the instant case. In the linked case Arbitrator Obiajulu determined that the results of the examination presented a cogent medical rationale as to why further benefits were terminated in support of Respondent's defense. Specifically, the linked award read in pertinent part:

> *Summary of Issues in Dispute*
>
> *The applicant seeks reimbursement of charges for a lumbar injection [CPT code 62323], anesthesia/surgical tray [A4550], Xylocaine [J2001], and epidurography [CPT code 72275], dexamethasone [J1100], and Omnipaque [Q996] performed on 12/08/22, following a motor vehicle accident occurring on 06/11/20. The respondent denied the claim based on the independent medical examination by Dr. Pierce Ferriter, MD on 07/12/22 and effective 08/23/22.*
> *Findings, Conclusions, and Basis Therefor*

…

The applicant, as assignee of the Injured Party, seeks the reimbursement, with interest and counsel fees, under the No-Fault Regulations, for a lumbar injection [CPT code 62323], anesthesia/surgical tray [A4550], Xylocaine [J2001], and epidurography [CPT code 72275], dexamethasone [J1100], and Omnipaque [Q996] performed on 12/08/22, in the amount of $1108.28.

The respondent insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., the respondent was obligated to reimburse the Injured Party (or assignee) for all reasonable and necessary medical expenses arising from the use and operation of the insured vehicle.

This case arises out of a motor vehicle accident occurring on June 11, 2020, in which the Injured Party (ML), a then-59-year-old male sustained multiple injuries including to the neck, left shoulder, low back, and left knee while driving the insured vehicle when it was rear-ended by the adverse vehicle. After the accident, he did not seek emergency treatment.

Subsequently, the Injured Party commenced conservative care consisting of physical therapy. MRIs of the lumbar spine, shoulders, and left knee were performed.

On 10/22/20, EMG/NCV studies to the upper extremities were performed that revealed evidence of bilateral C5, and right C6 radiculopathy with denervation to the bilateral biceps and right ECRB muscles as well as an incidental finding of bilateral median neuropathy.

On 11/10/20, Dr. Dov J. Berkowitz, MD performed an orthopedic evaluation and diagnosed left shoulder derangement with a labral tear and left knee derangement with a meniscal tear.

On 12/09/20, Dr. Berkowitz, MD performed left knee surgery.

On 01/14/21 EMG/NCV studies to the lower extremities were performed and revealed right L4, L5 radiculopathy with denervation to the right tibialis and EHL muscles.

On 02/15/21, Dr Daniel Giangrasso, D.O. performed lumbar epidural steroid injection under fluoroscopic guidance with contrast and

epidurgoram at L4/L5. [This is referenced in Dr. Giangrasso's 04/07/21 report found on page 121/259 of the applicant's original submission]

On 03/04/21, Dr. Douglas Schwartz, D.O. evaluated the Injured Party and reported that he presented with persisting neck, shoulder, and lower back pain; the pain was described as radiating to both upper and lower extremities with numbness, tingling, and dysesthesias and weakness. Physical examination revealed restricted cervical and lumbar spine ranges of motion with a positive Spurling's test bilaterally, SLR test at 50 degrees bilaterally, motor deficits in the bilateral deltoid, biceps, hip flexor, with sensory deficits, positive Jobe/Drop arm and Neer/Hawkins tests and restricted bilateral shoulder ranges of motion and left knee flexion. He summarized MRI findings and EMG/NCV findings. He recommended ongoing physical therapy, chiropractic treatment and referenced an upcoming left shoulder surgery.

On 03/24/21, Dr. Berkowitz performed left shoulder surgery.

On 04/07/21, Dr. Daniel Giangrasso, D.O. re-evaluated the Injured Party and recommended a cervical epidural steroid injection based on the persisting neck pain radiating to the upper extremities with numbness, tingling, and dysesthesia and weakness, as well as the positive finding affecting the cervical spine including a positive Spurling's test bilaterally.

On 09/29/21, the first cervical epidural steroid injection to C7/T1 was performed. On 11/03/21, a repeat cervical epidural steroid injection was performed at C7/T1.
On 12/27/21, the third cervical epidural steroid injection was performed at C7/T1 under fluoroscopic guidance and epidurogram.

On 02/28/22, a lumbar epidural steroid injection under fluoroscopic guidance with contrast and epidurogram at L4/L5 was repeated.

On 03/28/22, Dr. Giangrasso, D.O. re-evaluated the Injured Party and reported some improvement with the low back pain from the lumbar epidural steroid injection; he reported that his low back pain was graded 4/10.

On 04/06/22, Dr. Giangrasso, D.O. performed a repeat lumbar epidural steroid injection under fluoroscopic guidance with contrast and epidurogram at L4/L5.

On 04/19/22, Dr. Mohan Tripathi, MD re-evaluated the Injured arty and reported that the Injured Party's cervical spine pain persisted and was rated 9/10. He noted that the cervical epidural steroid injection

performed on 12/08/21 gave some relief of the neck pain and bilateral upper extremity radicular pain. He further noted that the low back pain was rated 8/10/ Physical examination revealed restricted cervical spine ranges of motion, dysesthesia in the left upper extremity, a positive Spurling's test on the left, diminished symmetrical DTRs [+1] in the bilateral upper extremities, tenderness and spasms in the lumbar spine with restricted ranges of motion, dysesthesia and normal DTRs in the lower extremities, a positive SLR test, and positive facet loading, diminished motor strength in the left deltoid, biceps, wrist extensors/flexors, triceps, and finger abductors and bilateral tibialis anterior, EHL, and gastrocnemius muscles, with sensory deficits in the Left, C%, C6, and C7, bilateral L4, L5, and Si dermatomes, and positive SLR test at 30 degrees. Based on his exam, he recommended possible surgery to the cervical spine was being considered.

On 05/04/22, Dr. Giangrasso, D.O. re-evaluated the Injured Party and reported that the lumbar epidural steroid injection provided some relief but that there was sciatica pain in the bilateral lower extremities. He graded his lower back pain as 4/10. His physical examination revealed, restricted cervical spine ranges of motion with tenderness and spasms, a positive Spurling's test on the left, motor deficits in the deltoid and biceps, and restricted lumbar spine ranges of motion with tenderness and spasms. The report also appears to contain conflicting findings of a positive SLR test at 50 degrees, motor deficits, and sensory deficits at bilateral L4/L5.

On 05/09/22, Dr. Giangrasso, D.O. performed a lumbar transforaminal epidural steroid injection under fluoroscopic guidance with contrast at bilateral L4/L5 levels.

Although the respondent reimbursed various healthcare providers for their medical services, it questioned whether the Injured Party required ongoing medical care. So, the respondent scheduled an independent medical examination [hereafter referred to as IME] by Dr. Pierce Ferriter, MD who examined the Injured Party on 07/12/22 and opined that based on his normal IME findings, the Injured Party's cervical spine sprains/strain and radiculopathy, thoracic spine sprain/strain, lumbar spine sprain/strain, and radiculopathy were resolved and the status post left shoulder surgery on 03/08/21 and status post left knee surgery on 12/09/20 were healed and that no further physical therapy, household help, special transportation, DME/supplies, prescription medication, diagnostic tests, massage therapy, injections, or surgery were medically necessary. The effective IME cutoff date was 08/23/22.

On 11/02/22, Dr. Tripathi, MD re-evaluated the Injured Party and reported essentially the same findings as his exam on 04/19/22. He recommended cervical epidural steroid injections.

On 11/16/22, a cervical epidural steroid injection at C7/T1 under fluoroscopic guidance and epidurogram was performed.

On 12/08/22, Dr. Daniel Giangrasso, D.O. performed the disputed lumbar epidural injection and related medical services/medications.

Thereafter, the applicant submitted its claim form to the respondent seeking reimbursement of no-fault benefits.

Within 30 days of its receipt of the applicant's claim form, the respondent denied reimbursement based on the IME by Dr. Pierce Ferriter, MD on 07/12/22 and effective 08/23/22.

After it received the respondent's denial, the applicant commenced this arbitration seeking reimbursement of its claim.

At the outset, I find that the applicant established its prima facie case with the submission of its claim form and the copy of the respondent's denial of claim form, which demonstrates that the respondent received the applicant's claim form, that more than 30-days elapsed since its receipt of same, and that the respondent denied reimbursement of the applicant's claim, which shows that the applicant's claim is now due and owing. See Insurance Law section 5106 [a]; Viviane Etienne Medical Care, PC v. County-Wide Ins. Co 25 N.Y.3d. 498, (NY, June 10, 2015), Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 A.D.3d. 1168, (N.Y.A.D. 2nd Dept., November 30, 2010).

Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense.

However, even before determining whether the respondent met its burden of proof, it must first be determined whether the respondent's lack of medical necessity defense survives preclusion.

I find that the respondent's lack of medical necessity defense is preserved based on the uncontested timely and legally sufficient denial asserting that defense.

Therefore, the issue is whether the respondent met its burden of proof in establishing its defense.

To establish its lack of medical necessity defense, the respondent relies on the IME by Dr. Pierce Ferriter, MD on 07/12/22 and effective 08/23/22. To rebut that defense, the applicant relies on its contemporaneous medical evidence, which appears to be a medical report for an exam on 05/04/22 and 11/02/22 and the reports for the injections.

Reviewing the relevant evidence in the record and considering the oral arguments made by the parties, I find as follows:

In determining whether an insurer met its burden of proof in establishing its lack of medical necessity defense, the courts have found that an insurer must submit an IME report/peer review with a detailed basis and medical rationale for the denial of benefits in order to prevail. See Vladimir Zlatnick, M.D., P.C. v. Travelers Ins. Indemnity Co., 12 Misc. 3d 128A (App. Term 1stDept. 2006) and Nir v. Allstate, 7 Misc.3d 544, 546-47 (Civ. Ct., Kings County. 2005). ("At a minimum, (the respondent) must establish a factual basis and medical rationale for the lack of medical necessity of (applicant's) services"). Once the respondent submits an IME report or peer review that has a sufficient factual basis and medical rationale, then the courts have routinely found that the respondent has established its prima facie defense that the disputed medical service is medically unnecessary. A Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc.3d 131(A), (N.Y. Sup. App. Term Jul 03, 2007). Then, the burden of persuasion regarding the medical necessity of the medical services shifts to the applicant to submit competent medical evidence to refute the respondent's prima facie defense that the disputed medical service/test was medically unnecessary. Compare Pan Chiropractic PC v. Mercury Ins. Co., 24 Misc.3d. 136 (A) (July 9, 2009). However, notably, as Judge Aaron Maslow determined in the case of American Tr. Ins. Co. v. Right Choice Supply, Inc., 2023 N.Y. Slip Op 23039, (N.Y. Sup., Kings County, February 9, 2023), Pan Chiropractic, PC, et. al, supra. is not controlling in arbitrations because that case applies to summary judgment motions and not no-fault arbitrations. He reasoned no-fault arbitrations "…entail final determinations, akin to a bench trial where the trial court hears the evidence and makes its own findings of fact…"

Applying the above case law and criteria to the medical evidence in the record, I find in favor of the respondent because the respondent rebutted the initial presumption that the disputed injections and related medical services/medications performed on 12/08/22 were medically unnecessary with Dr. Ferriter's comprehensive normal IME findings. The IME examiner reported normal ranges of motion [which are close to that reported by Dr. Giangrasso, D.O. for his exam on 05/04/22], negative orthopedic tests, and a normal neurological exam. Although the IME examiner reported that the Injured Party presented with subjective complaints, he opined that no further treatment including injections was medically necessary. I find that the IME examiner set forth a sufficient factual basis and medical rationale to support his conclusion based on the IME report.

Therefore, the question was whether the applicant rebutted the respondent's defense.

> *I find that the applicant did not rebut the IME report mainly because Dr. Giangrasso's medical records appear to contain conflicting information. For instance, the report for the exam on 05/04/22 indicated a negative SLR test as well as a positive SLR test and a normal motor exam as well as motor deficits regarding the lower extremities. Also, Dr. Giangrasso does not list the initial lumbar epidural steroid injection listed in his 04/07/21. Therefore, based on the conflicting/missing information in Dr. Giangrasso's reports, I will not rely on the most contemporaneous report for an exam on 05/04/22. I find that the medical report on 11/02/22 also raises questions because the positive findings are severe in comparison to Dr. Giangrasso's reported exam findings. So, the bottom line is that I afford less evidentiary weight to the applicant's medical records and find that they don't rebut the respondent's normal IME findings* ***Accordingly, for the above reasons, I find in favor of the respondent. The applicant's claim is denied in its entirety.***

I also addressed Respondent's defense in the linked case of *Prompt Medical Spine Care, PLLC and State Farm Mutual Automobile Insurance Company,* AAA Case No.: 17-23-1321-4609, heard on 4/26/2024. The linked cases also involved the same parties, the same Assignor, the same motor vehicle accident, and the same defense of lack of medical necessity predicated on the IME of Pierce Ferriter, M.D., which was conducted on 7/12/2022 as the instant case. In the linked case before me I determined that Arbitrator Obiajulu's decision in *Prompt Medical Spine Care, PLLC and State Farm Mutual Automobile Insurance Company,* AAA Case No.: 17-23-1284-5137, heard on 8/7/2023, was entitled to collateral estoppel effect. Specifically, after citing to Arbitrator Obiajulu's decision the award held in pertinent part:

> *Summary of Issues in Dispute*
>
> *The record reveals that the Assignor-M.L., a 61-year-old male, claimed injuries as the driver of a motor vehicle involved in an accident which occurred on 6/11/2020. Applicant billed for office visits, paravertebral lumbar injections, and injectable medication conducted from 8/24/2023 through 9/5/2023. Respondent denied the claim based on lack of medical necessity as per the results of the Independent Medical Evaluation (IME) performed by Dr. Pierce Ferriter, M.D., effective 8/23/2022. The issues to be determined are 1) whether Applicant's claim is precluded by the doctrine of collateral estoppel, and if not, 2) whether the services are medically necessary?*
> *Findings, Conclusions, and Basis Therefor*
>
> *Applicant seeks reimbursement for office visits, paravertebral lumbar injections, and injectable medication…*
>
> …

For the instant claim, the services were denied based on the same IME of Dr. Ferriter. Arbitrator Obiajulu held in the prior award that the results of the examination presented a cogent medical rationale as to why further benefits were terminated in support of Respondent's defense. Therefore, the burden shifted to the Applicant to establish the services were medically necessary. Arbitrator Obiajulu determined that the records submitted by Applicant failed to contradict the negative findings or rebut the IME. In the linked case, the parties had a full and fair opportunity to adjudicate the sufficiency of the Ferriter IME. Respondent has established that further orthopedic treatment is not medically necessary, which Applicant failed to rebut. The issues in the instant case and in the linked case decided by Arbitrator Obiajulu are identical, and therefore, the instant claim is denied under the doctrine of collateral estoppel.

Furthermore, I note that as with the linked case, Applicant relies on the same medical records in this case. I find that, were the prior decision not entitled to collateral estoppel effect, Applicant's medical records are insufficient to rebut the Respondent's IME objective examination. Applicant's proof is insufficient to overcome the shifted burden of proof. I find Respondent's IME report more detailed and thorough than any of Applicant's medical evidence. Accordingly, Applicant's claim, denied premised on the IME of Dr. Pierce Ferriter, M.D., is denied.

CONCLUSION

Accordingly, Applicant's claim is denied in its entirety. This award is in full disposition of all No-Fault benefit claims submitted to this Arbitrator.

In this, Respondent's denials for the bills for date of service 12/8/2023 and 12/14/2023 are based upon the same IMEs of Vijay Sidhwani, M.D., effective 8/25/2021, and Pierce Ferriter, M.D., effective 8/23/2022. In the linked case of AAA Case No.: 17-23-1284-5137 before Arbitrator Obiajulu, it was determined that that the results of Dr. Ferriter's examination presented a cogent medical rationale as to why further benefits were terminated in support of Respondent's defense. In the linked case, the parties had a full and fair opportunity to adjudicate the sufficiency of the Ferriter IME. Therefore, the burden shifted to the Applicant to establish the services were medically necessary. Arbitrator Obiajulu determined that the records submitted by Applicant failed to contradict the negative findings or rebut the IME and upheld Respondent's defense. I have previously determined in AAA Case No.: 17-23-1321-4609 that Arbitrator Obiajulu's award is entitled to collateral estoppel effect. Respondent's denials in this case establish that the claims were denied based on the same IME of Dr. Pierce Ferriter, M.D., conducted on 7/12/2022, which became effective on 8/23/2022. Therefore, the

issues in the instant case and in the linked case decided by Arbitrator Obiajulu are identical, and therefore, the instant claim is denied under the doctrine of collateral estoppel.

Applicant arguments that Respondent's IME reports of Vijay Sidhwani, M.D., conducted on 7/26/2021 and Pierce Ferriter, M.D., conducted on 7/12/2022 were untimely submitted and should be precluded based on the Rocket Docket are moot. Respondent's denials establish that the claim was denied based on the same IME of Pierce Ferriter, M.D., conducted on 7/12/2022, that was considered and upheld in the linked cases. Specifically, Arbitrator Obiajulu addressed the sufficiency of Dr. Ferriter's IME conducted on 7/12/2022 in the linked case of AAA Case No.: 17-23-1284-5137, heard on 8/7/2023, and determined that the report was sufficient to shift the burden to Applicant, which Applicant failed to rebut.Furthermore, in the linked case before me, *Prompt Medical Spine Care, PLLC and State Farm Mutual Automobile Insurance Company*, AAA Case No.: 17-23-1321-4609, heard on 4/26/2024, I agreed with Arbitrator Obiajulu that the report shifted the burden to Applicant, which Applicant failed to rebut, which is also entitled to collateral estoppel effect.As the parties had a full and fair opportunity to adjudicate the sufficiency of the Ferriter IME in the linked case, it need not be re-addressed in this case.

The policies underlying the application of res judicata and collateral estoppel are avoiding relitigation of a decided issue and the possibility of an inconsistent result. Notably, the preclusive effect, if any, to be afforded to an earlier decision in a subsequent arbitration proceeding is for the arbitrator of the second proceeding to determine. City School Dist. v. Tonawanda Education Assoc., 63 N.Y.2d 846, 482 N.Y.S.2d 258 (1984).

CONCLUSION

Accordingly, Applicant's claim is denied in its entirety. This award is in full disposition of all No-Fault benefit claims submitted to 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 NY
SS :
County of Nassau

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

08/22/2024
(Dated)

Eileen Hennessy

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
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