

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

PARS Medical PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1340-3803

Applicant's File No. 65605

Insurer's Claim File No. 0537105990004

NAIC No. 36447

ARBITRATION AWARD

I, Kevin R. Glynn, 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

Mark Fenelon, Esq. from Law Office of Diana Mullaev, PLLC participated virtually for the Applicant

Samantha Maher from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,067.88**, 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, PH, is a 65yo male driver who was injured in a motor vehicle accident on 6/4/23. In dispute are Applicant's claims for an office visit on 12/14/23 in the amount of \$142.62 and a Cervical Interlaminar Epidural Steroid Injection performed on 12/20/23 in the amount of \$1,060.74. Respondent denied the claims pursuant to an orthopedic IME by Dr. Dorothy Scarpinato, M.D., performed on 9/28/23, effective on 10/9/23. Also in dispute is Applicant's claims a Percutaneous Cervical Discectomy performed on 1/3/24 in the amount of \$3,864.52. Respondent denied the claim based on the peer review report by Dr. Vijay Sidhwani, M.D., dated 2/14/24. Therefore, there is an issue regarding the medical necessity of the claims, and if necessary, the proper amount of reimbursement pursuant to the applicable 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. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

Office Visit; Cervical Interlaminar Epidural Steroid injection

Applicant established a prima facie case of entitlement to reimbursement for its claims. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's evidence established that the claims were timely denied pursuant to the Orthopedic IME by Dr. Dorothy Scarpinato, M.D., performed on 9/28/23. Dr. Scarpinato noted the Assignor's current complaints of pain in his neck, back and left shoulder. She performed a comprehensive examination with all normal findings. She diagnosed resolved strains of the cervical spine, thoracolumbar spine, and left shoulder. She opined that there was no need for further orthopedic treatment. Respondent demonstrated a medical rationale and factual basis to support its defense that the services rendered were not medically necessary. See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2d, 11th and 13th Jud. Dists. 2014). Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. 2006 NY Slip Op 52116 (App Term 1st Dept. 2006).

Applicant relied on the rebuttal report by Dr. Isaac Kreizman, M.D., dated 5/7/24. However, the examination discussed by Dr. Kreizman dated 12/14/23 was not sufficiently contemporaneous to the IME performed on 9/28/23. Applicant has failed to submit objective positive findings that were sufficiently contemporaneous to the IME to rebut the IME determination. See Arnica Acupuncture, P.C. v Interboard Ins. Co., 2016 NY Slip Op 01434 (App Term 1st Dept. 2016). Applicant has failed to establish by a preponderance of the evidence the medical necessity of these post-IME services. Applicant's claims are denied.

Percutaneous Cervical Discectomy

Applicant established a prima facie case of entitlement to reimbursement for its claim. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's evidence established that the bill was timely denied pursuant to the peer review report by Dr. Vijay Sidhwani, M.D., dated 2/14/24. Dr. Sidhwani presented a detailed analysis in support of his opinion that the procedure was not medically necessary. Respondent presents a medical rationale and factual basis to support its defense of lack of medical necessity of the testing. See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2, 11 and 13 Jud. Dists. 2014). Accordingly, the burden now shifts to Applicant, who bears the ultimate

burden of persuasion See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. 2006 NY Slip Op 52116 (App Term 1st Dept. 2006).

Applicant relies on the rebuttal report by Dr. Isaac Kreizman, M.D., dated 5/7/24/24. Dr. Kreizman meaningfully addressed and rebutted the opinion of Dr. Sidhwani. See generally, Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009]. Specifically, Dr. Kreizman presented a detailed, cogent, point-by-point response to every opinion/issue raised in the peer review report and meaningfully addressed and rebutted that opinion. I find the rebuttal report more persuasive than the peer report and by a preponderance of the evidence has established the medical necessity of the claim.

Respondent submitted competent evidentiary proof with its fee schedule coder report by Stacy Durso, CPC, that the total eligible amount due was \$2,862.04 as reimbursement for the appropriate CPT code 62287; and that CPT code 77003 was inclusive of CPT code 62287. She also established that the E&M was inclusive of the surgical package and not reimbursable. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2000. Applicant is therefore awarded reimbursement of the claim in the total amount of \$2,862.04.

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
	PARS Medical PC	12/14/23 - 12/14/23	\$142.62	Denied
	PARS Medical PC	12/20/23 - 12/20/23	\$1,060.74	Denied
	PARS Medical PC	01/03/24 - 01/03/24	\$3,864.52	Awarded: \$2,862.04
Total			\$5,067.88	Awarded: \$2,862.04

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/14/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

In the instant matter Applicant is awarded interest pursuant to the no-fault regulations. 11 NYCRR 65-3.9 (a) provides that Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." Pursuant to 11 NYCRR 65-3.9 (c), "if an applicant does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." Applicant electronically submitted its claim for arbitration on 3/14/24, more than thirty days after receipt of the denial of claims. Therefore, interest shall run effective 3/14/24.

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum of the awarded claim plus interest, subject to a maximum of \$1,360.00.

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

08/28/2024
(Dated)

Kevin R. Glynn

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:
b7cfbd23d3b9968a9b6976c53a9470cf

Electronically Signed

Your name: Kevin R. Glynn
Signed on: 08/28/2024