

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Paramus MRI, LLC  
(Applicant)

- and -

Travelers Personal Insurance Company  
(Respondent)

AAA Case No. 17-23-1314-5395

Applicant's File No. 3124647

Insurer's Claim File No. 263 PP ITF2711  
H

NAIC No. 38130

**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-S.R.

1. Hearing(s) held on 07/31/2024  
Declared closed by the arbitrator on 07/31/2024

Melissa Scotti from Law Offices of Andrew J. Costella Jr., Esq. participated virtually for the Applicant

Sheridan Chu from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,774.22**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute from the original amount of \$2,774.22 to \$1,003.20 in accordance with Respondent's fee audit. Applicant's claim for the balance of the MRI of the cervical spine is withdrawn with prejudice as paid in accordance with the applicable fee schedule.

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 claim was mailed to and received by Respondent and (ii) Respondent's denial of the subject claim was timely issued.

### 3. Summary of Issues in Dispute

The record reveals that the Assignor-S.R., a 35-year-old male, claimed injuries as the driver of a motor vehicle involved in an accident that occurred on 3/17/2022. Applicant seeks reimbursement for an MRI of the lumbar spine conducted on date of service 6/11/2022. Respondent denied the bill based upon the peer review of Dilip Subhedar, M.D., dated 7/12/2022. The issue to be determined is whether the service is medically necessary?

### 4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for an MRI of the lumbar spine. 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 at the hearing held via Zoom. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon.

11 NYCRR 65-4.5 (o) (1) (Regulation 68-D), reads as follows: The arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

#### **Legal Standards for Determining Medical Necessity**

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. 2014). 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 1st Dept. 2006). The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, *Kingsbrook Jewish Medical Center v. Allstate Ins. Co.*, 61 A.D.3d 13, 871 N.Y.S.2d 680 (2d Dept. 2009), such as by a qualified expert performing an independent medical examination or conducting a peer review of the injured person's treatment. *See Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp.*, 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003). The appellate courts have not clearly defined what satisfies the insurer's evidentiary standard except to the extent that "bald assertions" are insufficient. *Amherst Medical Supply, LLC v. A Central Ins. Co.*, 41 Misc.3d 133(A), 981 N.Y.S.2d 633 (Table), 2013 NY Slip Op 51800(U), 2013 WL

5861523 (App. Term 1st Dept. Oct. 30, 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity. 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 Ins. Co.*, 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); *See also, All Boro Psychological Servs. P.C. v. GEICO*, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

Where a Respondent meets its burden, it becomes incumbent on the claimant to rebut the peer review. *Be Well Medical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 18 Misc.3d 139(A), 2008 WL 506180 (App. Term 2d & 11 Dists. Feb. 21, 2008); *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 2007 WL 1989432 (App. Term 2d & 11 Dists July 3, 2007. "[T]he insured/provider bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb.'" *Bedford Park Medical Practice, P.C. v. American Transit Ins. Co.*, 8 Misc.3d 1025(A), 2005 WL 1936346 at 3 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). "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 (*see* Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11 ed])." *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131(A), 2006 N.Y. Slip. Op. 5187(U) at 2, 2006 WL 2829826 (App. Term 2d & 11 Dists. Sept. 29, 2006).

### **Application of Legal Standards**

The Assignor was referred for MRIs of the cervical spine and lumbar spine by Steven P. Waldman, M.D., which were conducted on 6/11/2022. Dr. Dilip Subheadar, M.D. determined the MRI of the cervical spine was medically necessary in the peer review, dated 7/12/2022, which Respondent paid.

In support of its contention that the MRI of and lumbar spine conducted on 6/11/2022 was not medically necessary, Respondent relies upon the peer review of Dilip Subheadar, M.D., dated 7/12/2022. Applicant relies on the rebuttal of Steven P. Waldman, M.D., dated 10/10/2023.

Dr. Subheadar reviewed extensive medical records, including the referring examination, dated 5/27/2022, by Dr. Waldman, and conservative treatment records, and made a determination that the MRI of the lumbar spine was not medically necessary. I find Respondent has met its evidentiary burden. The peer review authored by Dilip Subheadar,

M.D., dated 7/12/2022, adequately set forth the factual basis and medical rationale to support the conclusion that the prescribed MRI was not medically necessary. That being so, the burden shifts to the Applicant to counter Respondent's showing.

In this matter, I am faced with conflicting opinions concerning the medical necessity for the disputed MRI herein. There are no legal issues to resolve. This dispute involves solely an issue of fact, that is, whether the MRI was medically necessary. Resolution of that fact is determined by which opinion is accepted by the trier of fact.

Having carefully reviewed the evidence, including the rebuttal statement, dated 10/10/2023, the examination reports, dated 4/6/2022 and 5/27/2022, by Steven P. Waldman, M.D., the MRI reports of the cervical spine and the lumbar spine, dated 6/11/2022, physical therapy treatment notes, dated 3/31/2022 through 6/29/2022, occupational therapy treatment notes, dated 4/1/2022 through 5/26/2022, chiropractic treatment notes, dated 4/19/2022 through 5/26/2022, emergency department records, dated 3/17/2022, and all the medical records incorporated into the electronic file, I find, as a matter of fact, that the more credible evidence resides with the Respondent. Applicant failed to rebut Dr. Subhedar's position, supported by medical literature, that, "The standard of care for MRI is as follows: MRI should be reserved for patients with clear-cut neurologic findings or suspected ligamentous instability. Repeat MRI is not routinely recommended and should be reserved for significant changes in symptoms and/or findings that suggest significant new pathology (eg, tumor, infection, fracture, neuro-compression, recurrent disc herniation). As cited in Pompan: 'For most patients with neck, back, knee, or shoulder pain, a diagnosis can be made with a history, physical examination, and plain film radiography; surgery is not indicated. Neck and back pain have many causes, but the majority of patients will improve with conservative management. 1, 2 Shoulder pain is most often associated with conditions that do not require surgery (e.g., muscle strains, tendinopathy). 3 Similarly, knee pain, especially without discrete trauma, is often secondary to nonsurgical conditions such as tendinopathy and patellofemoral syndrome. 4 The treatment for these common conditions-which usually involves muscle strengthening and stretching, and possibly physical therapy-would not be dependent on MRI results. Most patients will improve within a few weeks or months... The claimant has radiating pain into the extremities. Spurling's and SLR were positive. However, there is only conservative treatment for the cervical spine. The claimant underwent 2 months of conservative treatment without relief in symptoms. Therefore, the MRI cervical spine was medically necessary. Regarding the lumbar MRI, there was no conservative treatment for this body part therefore this was not medically necessary".

The rebuttal noted in pertinent part, "The crux of the peer review doctor's sole argument is that there was allegedly no conservative treatment in regard to our patient's low back. To the contrary, [Assignor-S.R.] had conservative care in the form of hospital care {The Valley Hospital}, physical therapy treatment (Progressive PT PC), nearly three months of rest, OTC pain medications {Advil & Tylenol & muscle relaxers}, and pain management with my office. Regardless, I completely disagree with the peer reviewer's conclusion as in this case our patient's concerning neck and low back injuries and subsequent (+) objective clinical examination findings from the traumatic car accident were immediate and not of gradual onset. Whereas the clinical scenario that the

insurance company's peer reviewer lays out might arguably be appropriate for a patient who presents with pain of a non-traumatic etiology and then a conservative treatment program with a wait and see approach' to MRI testing may be acceptable and within the standards of care. Because of the accuracy and clarity of MR imaging, it is no longer necessary to wait to performing an MRI. An MRI will allow for a clearer picture of the soft tissue, and it will enable evaluation of injuries to the ligaments, tendons, muscles and discs, thus allowing for a more targeted treatment plan".

While Dr. Waldman's rebuttal point out the medical records that the peer doctor did not review, including the MRI prescription, dated 6/9/2022, and Dr. Waldman's initial examination, dated 4/6/2022, I note that Dr. Waldman does not list the medical records that he reviewed for the rebuttal. Contrary to Dr. Waldman's position that the claimant had physical therapy to the lumbar spine, my review of the conservative treatment records confirms the peer doctor's position that, "The claimant has radiating pain into the extremities. Spurling's and SLR were positive. However, there is only conservative treatment for the cervical spine. The claimant underwent 2 months of conservative treatment without relief in symptoms. Therefore, the MRI cervical spine was medically necessary. Regarding the lumbar MRI, there was no conservative treatment for this body part therefore this was not medically necessary". The claimant did not make complaints of pain to the physical therapist or to the chiropractor, and all physical therapy and chiropractic treatment was directed towards the cervical spine. There was no conservative treatment directed towards the lumbar spine documented in the medical records prior to the claimant's referral for the MRI of the lumbar spine.

The rebuttal argues that due to the traumatic nature of the injuries, the referral for the lumbar spine MRI was medically necessary before the claimant underwent a trial of conservative care to determine a treatment plan. However, Dr. Waldman indicated at the initial examination on 4/6/2022 that the claimant should continue with conservative care for three to four weeks before considering referrals for MRIs of the cervical and lumbar spine, thereby agreeing with the peer doctor that conservative treatment prior to the referrals for the MRIs is the appropriate standard of care. Specifically, Dr. Waldman noted at the initial examination on 4/6/2022 that the claimant began conservative treatment a week prior to the examination and directed in his treatment plan, for the patient to, "attend physical therapy program at progressive physical therapy 3 times each week and modalities will be implemented to decrease muscle spasm and hopefully improve range of motion" and "Follow-up in 3 to 4 weeks to assess status. If pain symptoms have not abated and examination remains unchanged, MRI studies of the cervical and lumbar segments will certainly be warranted". The claimant was referred for the MRIs at the follow-up examination on 5/27/2022 to "rule out disc herniation" in the cervical and lumbar segments and for evidence for "cervical and lumbar discogenic, facetogenic, and radicular pain". However, there was no indication that Dr. Waldman reviewed conservative care treatment records to determine whether the claimant received conservative treatment to the cervical spine and lumbar spine prior to the referrals.

I am persuaded by the peer doctor that the referral for the MRI of the lumbar spine was outside of the standard of care as the claimant did not receive conservative treatment to the lumbar spine prior to the referral. Therefore, the referral was premature. I am more

persuaded by the peer review and find that Applicant failed to rebut the peer doctor's opinion. Applicant's claim for the MRI of the lumbar spine is denied.

## **CONCLUSION**

Accordingly, Applicant's claim is denied. This decision is in full disposition of all claims for No-Fault benefits presently before 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.

08/30/2024  
(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  
**Unique Modria Document ID:**  
c19fbb842d6ab4a4e94792f5f0a7334c

### Electronically Signed

Your name: Eileen Hennessy  
Signed on: 08/30/2024