

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sky Radiology, PC.
(Applicant)

- and -

American States Insurance Company
(Respondent)

AAA Case No. 17-23-1330-3366

Applicant's File No. FDNY23-71574

Insurer's Claim File No. 054013280001

NAIC No. 19704

ARBITRATION AWARD

I, Frank Marotta, 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-JB

1. Hearing(s) held on 08/22/2024
Declared closed by the arbitrator on 08/22/2024

Todd Fass, Esq. from Fass & D'Agostino, P.C. participated virtually for the Applicant

Michelle Randazzo, Esq. from American States Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,903.98**, was AMENDED and permitted by the arbitrator at the oral hearing.

The Applicant amended the amount in dispute to \$3,220.43.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate and agree that the Applicant established its prima facie burden, the Respondent timely denied the claims and the amended amount in dispute does not exceed the permissible fees allowable under the applicable New York State Workers' Compensation Fee Schedule (WCFS) for the services provided.

3. Summary of Issues in Dispute

The record reveals that the Assignor-JB, a 34-year-old-female, sustained injuries in a motor vehicle accident on 6/26/23.

The Applicant seeks reimbursement for MRIs of the right wrist (\$966.54) and left wrist (\$966.54) on 7/18/23 and cervical spine (\$967.70) and lumbar spine (\$1,003.20) on 7/25/23.

The Respondent denied reimbursement based on a peer review by Dr. Ajendra Sohal.

The issue is whether the MRIs were medically necessary.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of \$3,903.98 for disputed fees in connection with MRIs performed on 7/18/23 and 7/25/23.

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. 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. The parties appeared and the hearing was conducted virtually via zoom.

The Respondent denied reimbursement asserting the MRIs were not medically necessary. To deny a claim based on a lack of medical necessity the insurer must present medical evidence which sets forth with sufficient particularity the factual basis and medical rationale underlying that determination. Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 12 Misc. 3d 133(A), 2006 NY Slip Op 51185(U) (App Term 2d Dept. 9th and 10th Jud Dist. June 8, 2006). See also A. B. Med. Servs. PLLC v Liberty Mut. Ins. Co., 10 Misc 3d 128(A), 2005 NY Slip Op 51902 (U) (App Term, 2d & 11th Jud Dists); Amaze Med. Supply v Allstate Ins. Co., 2004 NY Slip Op 24119, 3 Misc3d 43, 44 [App Term, 2d & 11th Jud Dists 2004]. Such evidence can take the form of a "*peer review or any other proof, such as an independent medical examination, setting forth a sufficiently detailed factual basis and medical rationale for the claim's rejection, e.g. Choicenet Chiropractic P.C. v Allstate Ins. Co.*, NYLJ, Mar. 7, 2003 (App Term, 2d & 11th Jud Dists)" Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2003 NY Slip Op 51701(U) (NY App. Term 2003); see also 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).

In support of its defense Respondent relies on a peer review by Dr. Ajendra Sohal dated 9/9/23. Dr. Sohal provides a history of the Assignor as a 33-year-old female who was involved in a motor vehicle accident on 6/26/23 as a restrained front-seat passenger. She reports she sustained injuries to the neck and lower back. She was transported by ambulance to the local hospital. She was asymptomatic prior to the accident. According to an evaluation by Dr. Kosharsky dated 8/7/23, she presents for evaluation regarding the above-mentioned accident with complaints of intermittent neck pain radiating to bilateral shoulders and intermittent lower back pain radiating to the buttocks and left > right leg, with numbness and tingling. Low back pain was noted to be exacerbated by mechanical type of activities. Interim treatment consisted of medication and physical therapy. Physical examination revealed tenderness and moderate muscle spasms in the neck and low back with limited range of motion. Light touch and pin prick sensation normal. Motor strength was 4/5 biceps and deltoid b/l. DTR were +2. Sensory (left): pin prick and light touch decreased L5 and S1. Motor (left): hip extensors, ankle extensors, knee flexors 4/5. DTR (left): + 1 Patella, Achilles. Clinical impression was Cervicalgia, other intervertebral disc displacement, lumbar reg, intervertebral disc disorders w/radiculopathy, lumbar region, muscle spasm of back. The treatment plan notes that the claimant should continue a course of physical therapy 2 to 3 times a week for 6 to 8 weeks.

Having reviewed the initial evaluation report of the prescribing healthcare provider dated 7/3/23 when the MRIs were ordered and citing medical authority to support his opinion that they were medically unnecessary, I find that the Respondent has met its prima facie burden with the peer review by Dr. Sohal. Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219 (U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 546-47 (Civ. Ct. Kings Co. 2005). According to Dr. Sohal the Assignor underwent MRIs of the right wrist and left wrist as well as the cervical and lumbar spine on 7/18/23 and 7/25/23 but asserts they were prematurely ordered at the initial evaluation of 7/3/23. According to Dr. Sohal, the initial report reveals that both wrists were reportedly painful and tender, but no specific examination was undertaken. Dr. Sohal, asserts there may have been wrist pain but no suspicion of fracture, etc. There was no specific examination. There was no specific diagnostic dilemma. The use of MRI of the wrist as a screening tool was not medically necessary. He goes on to say that the MRIs of the cervical and lumbar spine were performed on 7/25/23 and also prescribed prematurely at the time of initial examination without any red flag signs and without exhaustion of the conservative care. There was no reason for claimant not to be continued with conservative care, only if the claimant does not respond to the treatment after full length of the conservative care or if there are red flag signs or any intervention is needed MRI may be considered. In this clinical scenario the MRIs were premature and medically unnecessary and basically used as a screening tool without medical rationale.

When a Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant who must then present its own evidence of medical necessity. See West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) at 2 (App. Term 2d & 11th Dists. Sept. 29, 2006); Lynbrook Medical of New York, PC v Praetorian Ins. Co., 48 Misc. 3d 139(A); 2015 NY Slip Op 51226(U) (App. Term, 2d, 11th and 13th Jud Dists

2015); Alfa Medical Supplies v. Geico General Ins. Co., 2013 NY Slip Op 50064(U), 38 Misc. 3d 134(A) (App. Term, 2d, 11th and 13th Jud Dists 2013).

In support of its claim the Applicant submits a peer review rebuttal by Dr. Clifton Burt, dated 3/4/24. Dr. Burt also reviewed the MRI requisition report, dated 07/03/23 and the evaluation report of the ordering doctor dated 07/03/23. Dr. Burt highlights the subjective complaints and objective findings reflected in the initial evaluation report dated 7/3/23. He goes on to say that the peer reviewer failed to acknowledge that in the instant case, the patient had a Red Flag of Trauma that warranted further diagnostic imaging work-up. In addition, as per Patient-Centered Outcomes Research Institute (PCORI)-Future Research Identification: Comparative Effectiveness of Nonsurgical Treatment for Cervical Disc and Neck Pain Oct 2015, Red-flag symptoms include trauma, symptoms of spinal cord compromise (pain/weakness/sensory loss in arms/legs), severe pain with tenderness palpable over the spine. These guidelines allow for an MRI to be performed when suspected" and not after a prescribed waiting period with a failure of conservative treatment. Also, as per the American Academy of Family Physicians -Imaging for Low Back Pain - "The evaluation for low back pain should include a complete, focused medical history looking for red flags, which include, but are not limited to severe or progressive neurologic deficits, trauma. Dr. Burt goes on to cite authority discussing MRI and its ability to diagnose spinal condition, including tumors in the bone or soft tissues, bulging discs, herniated discs, aneurysms or other vascular disorders and other soft tissue disorders, bone abnormalities, or joint disorders. MRI allows the radiologist to directly evaluate all the soft tissues of the spine, including the ligaments, cord, disks, and vasculature. MRI allows the evaluation of the spinal cord. Dr. Burt notes that the article cited explains the necessity of MRIs, and when and why they are recommended by doctors. According to the article, the patient was suffering from back pain or spine injury, so MRIs were necessary.

With regards to the MRIs of the bilateral wrists, per Acr-Scbt-Mr-Spr-Ssr Practice Parameter For The Performance Of MRI Of The Wrist: MRI is a proven, established imaging modality for the detection, evaluation, staging, and follow up of disorders of the wrist. Properly performed and interpreted, MRI not only contributes to diagnosis but also serves as an important guide to treatment planning and prognosis. Early use of wrist MRI for patients with suspected scaphoid fractures has been found to decrease the morbidity that can be associated with these types of injuries, including cost, time immobilized, and time away from work. MRI of the wrist may be useful to evaluate specific clinical problems, including, but not limited to: Acute and chronic wrist instability, Dorsal or ulnar-sided wrist pain, Wrist symptoms in adolescent gymnasts and other athletes, Unexplained chronic wrist pain, Acute wrist trauma, Wrist malalignments, Limited or painful range of motion, Unexplained wrist swelling, mass, or atrophy, Planning for diagnostic or therapeutic arthroscopy or Recurrent, residual, or new symptoms following wrist surgery.

Dr. Burt goes on to note that as per an article, Role of MRI in evaluation of painful wrist joint: The aim of this work was to show the value of MRI in the evaluation of patients suffering from wrist pain. This study was conducted on 50 patients complaining of wrist pain and concluded that MRI has a marked impact on the diagnosis and assessment of a variety of wrist disorders. It is a non-invasive and ideal modality to demonstrate the

complex anatomy and pathological conditions of the wrist. Dr. Burt cites a study entitled *The Value of Delayed MRI Scans in the Assessment of acute wrist injuries*. The aim of the study was to better quantify the role of delayed MRI scans in acute wrist injuries, and to assess the prevalence and distribution of multiple occult injuries of the wrist. The study involved a retrospective review of patients who had been referred to the orthopedic trauma clinic for a possible scaphoid fracture and with normal radiographs over a two-year period. It concluded that in the majority of patients with persisting symptoms after two weeks following a wrist trauma, the cause of symptoms was pathology in other tissues in the wrist including soft tissues, other carpal bones, and distal forearm.

In this matter I am presented with a question of fact as to whether the MRIs performed on 7/18/23 and 7/25/23 were medically necessary to be determined based on conflicting opinions of two experts neither of which examined or prescribed the MRIs in issue. Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013). Therefore, a factual finding as to whether the MRIs were medically necessary must be made based on which expert opinion is accepted following a review of the medical records and authority cited. After a review of the documents contained in the ECF including the initial evaluation report and the MRI referral by the referring healthcare provider both dated 7/3/23, seven days after the motor vehicle accident, I as a matter of fact that the MRIs were not medically necessary. I am more persuaded by the opinion of Dr. Sohal that the MRIs were ordered prematurely and improperly used as screening tools without a sufficient medical rationale. I find the weight and persuasiveness of the proof favors the Respondent. Dr. Burt's rebuttal does not meaningfully refute Dr. Sohal's finding and opinion. Jaga Med. Servs., P.C. v American Tr. Ins. Co., 2017 NY Slip Op 50954(U), 56 Misc. 3d 134(A) (2d, 11th & 13th Jud Dists July 21, 2017); Yklik, Inc. v. Geico Ins. Co., 2010 NY Slip Op. 51336(U) (App Term 2d, 11th & 13th Dists. July 22, 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009). Where the assertions of a peer reviewer setting forth a factual basis and medical rationale for his determination that there was a lack of medical necessity for services rendered are unrebutted by the provider, a judgment should be granted to the insurer. A Khodadadi Radiology, P.C. v. NY Central Mutual Fire 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 & 11th Dists. July 3, 2007).

For the reasons noted above the 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, Frank Marotta, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

08/31/2024

(Dated)

Frank Marotta

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:
c84d02c1a71bb8e2c2870e3325437035

Electronically Signed

Your name: Frank Marotta
Signed on: 08/31/2024