American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SCOB LLC (Applicant)	AAA Case No.	17-24-1331-7549
	Applicant's File No.	M07570
- and -	Insurer's Claim File No.	687978
	NAIC No.	Self-Insured
MVAIC (Respondent)		

ARBITRATION AWARD

I, Amanda R. Kronin, 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: KM

1. Hearing(s) held on 08/27/2024
   Declared closed by the arbitrator on 08/27/2024

   Ashley Andrews Santillo, Esq from Munawar Law Firm, PLLC participated virtually for the Applicant

   David Gierasch, Esq from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$976.38**, 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

   KM, a male who was then, 36 years old, was involved in an automobile accident on 10/28/22 as a driver. He sustained various injuries and, on 11/01/23, he underwent a lumbar epidural steroid injection with ultrasound guidance. Reimbursement for the procedure was denied predicated on a peer review by Jeffry Beer, MD, dated 11/05/23. The sole issue to be determined is the medical necessity of the aforementioned treatment

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4. Findings, Conclusions, and Basis Therefor

The case was decided on 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 the electronic file for both parties and make my decision in reliance thereon.

In support of its position, Applicant submitted claims in the amount of $976.38 related to the injections referenced above.

In order 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. 20140. Respondent bears the burden of production in support of it 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 Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 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 civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion.

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, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

In support of its defense, Respondent has submitted copies of the peer review by Jeffry Beer, MD dated 11/0523. Dr. Beer reviewed a number of medical records to support his findings and conclusions. He opines that the lumbosacral epidural steroid injection was not medically necessary. Citing to medical literature he opines that the repeat injection was not necessary because there were no sensory, motor strength and deep tendon reflex deficits documented. He also notes that there is no radiating pain in a radicular pattern throughout the lower extremities or associated paresthesias noted. He notes that there was no documentation of radiating lumbar pain, and no documentation of lumbar radicular pain involving the lower extremities was noted. I find that the report of the peer review doctor was sufficient to carry the burden of persuasion on the issue of lack of medical necessity of the LESI for the IP. That shifts the burden to the applicant to show that the LESI were medically necessary.

I find that the report of the peer review doctor was sufficient to carry the burden of persuasion on the issue of lack of medical necessity of the LESI for the IP. That shifts the burden to the applicant to show that the LESI was medically necessary.

Applicant submitted a rebuttal by Stanley Ikezi, MD and the medical records to support its position. Dr. Ikezi notes that based on the patient's non-responsiveness to conservative treatments the ESI was medically necessary.

In this case I do find a number of positive subjective and also objective findings including numbness, tingling, and radiating pain which support the necessity for the lumbar epidural injection at issue. As such, I find the Applicant has not deviated from the standard of care and has established its burden of persuasion in rebuttal. Additionally, I find Dr. Ikezi's rebuttal persuasive. Here, Dr. Ikezi addresses the conclusions of Dr. Beer with relevant and meaningful reference to the clinical record. In this regard, I find the opinion of Dr. Ikezi to be more persuasive than the opinion of Dr. Beer. I note that Dr. Beer has submitted an addendum but I do not find that the Addendum sets forth any additional information that would serve to shift the burden back to the Applicant. As such, I find that Applicant has rebutted Respondent's defense and sustained its burden of proof regarding the medical necessity of the treatment at issue.

Therefore, I find in favor of Applicant. Accordingly, reimbursement in the amount of $976.38 is due and owing herein. 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	SCOB LLC	**11/01/23 - 11/01/23**	**$976.38**	**Awarded: $976.38**
Total			**$976.38**	**Awarded: $976.38**

B. The insurer shall also compute and pay the applicant interest set forth below. 01/09/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when 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 Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first- party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 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, Amanda R. Kronin, 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)

Amanda R. Kronin

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:
1f185ba0563765721613787133f79a79

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 08/31/2024