

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-24-1340-5632

Applicant's File No. RB-204-394887

Insurer's Claim File No. 18077789

NAIC No. Self-Insured

ARBITRATION AWARD

I, Tasha Dandridge-Richburg, 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: EIP

1. Hearing(s) held on 09/03/2024
Declared closed by the arbitrator on 09/03/2024

Alex Samaroo, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Jake Komer, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$371.72**, 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 63 year-old male EIP was a passenger in a motor vehicle that was involved in an accident on January 26, 2022. At issue in this case is \$371.72 for physical therapy treatments on dates of service from November 23, 2022 to December 15, 2022. The treatments were timely denied based upon an independent medical examination (IME) conducted by Douglas Unis, MD on August 12, 2022.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4.5(o)(1), 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. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

DR. UNIS' IME

On August 12, 2022, Dr. Unis conducted an orthopedic re-examination of the EIP. Dr. Unis previously examined the EIP on September 17, 2021. Dr. Unis' August 12, 2022, examination of the EIP's cervical spine, thoracic spine, lumbar spine, shoulders, elbows, wrists/hands, hips, knees, and ankles/feet all revealed full ranges of motion in all planes.

Dr. Unis' diagnosis was cervical, thoracic, and lumbar sprain/strain, resolved. Following his examination and review of records, Dr. Unis concluded as follows:

TREATMENT:

Based on my examination, review of records and history provided by the claimant, no treatment is necessary from an orthopedic viewpoint. There is no need for orthopedic treatment or physical therapy. It is my opinion that there is no necessity for household help, injections, diagnostic testing, massage therapy, special transportation, durable medical supplies or surgery. An end result with physical therapy and orthopedic treatment has been reached.

As listed above the MRI report of the cervical and lumbar spine and right shoulder is not clinically significant and was not corroborated at this examination.

...

DISCUSSION:

The claimant presented today for an examination with complaints of pain to the cervical and lumbar spine and right shoulder. There were no objective findings such as spasm, crepitus, effusion or any positive orthopedic testing at the time of today's examination to correlate with these subjective complaints to the cervical, thoracic and lumbar spine, right and left shoulder. Ranges of motion are within normal limits, there are no complaints of tenderness and the neurological exam was normal. Therefore, no further physical therapy or any orthopedic treatment is needed for the cervical, thoracic and lumbar spine, right and left shoulder.

Analysis

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). *Amaze Medical Supply, Inc. v. Eagle Ins. Co.*, 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); *Tahir v. Progressive Cas. Ins. Co.*, 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); *Millennium Radiology, P.C. v. New York Cent. Mut.*, 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); *Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co.*, 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); *All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co.*, 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Unis' IME fails to set forth a clear factual basis and a medical rationale for Respondent's denials of Applicant's claims for the treatments in dispute herein and as such, I find that Respondent has failed to establish a lack of medical necessity for same. According to Dr. Unis' report, he reviewed the EIP's cervical spine and lumbar spine MRI reports, both of which revealed positive disc pathology. These studies represent objective evidence of a spinal condition and/or injury. Dr. Unis did not sufficiently discuss these studies in relation to his opinion that the EIP's cervical and lumbar spine conditions were resolved. He provided no opinion as to whether the MRI findings were due to degenerative/pre-existing conditions or trauma. Dr. Unis' conclusion that the MRIs were "not clinically significant" was a conclusory statement that is not sufficiently explained. I find that Dr. Unis' report is incomplete and insufficient to meet Respondent's burden of proving that further treatment would be medically unnecessary. Therefore, Respondent's denials cannot be upheld.

Accordingly, I find for Applicant.

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
	CitiMed Complete Medical Care PC	11/23/22 - 11/23/22	\$61.08	Awarded: \$61.08
	CitiMed Complete Medical Care PC	11/30/22 - 12/08/22	\$122.16	Awarded: \$122.16
	CitiMed Complete Medical Care PC	12/15/22 - 12/15/22	\$61.08	Awarded: \$61.08
	CitiMed Complete Medical Care PC	12/15/22 - 12/15/22	\$127.40	Awarded: \$127.40
Total			\$371.72	Awarded: \$371.72

B. The insurer shall also compute and pay the applicant interest set forth below. 03/15/2024 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). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.*

- 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 Erie

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

09/03/2024
(Dated)

Tasha Dandridge-Richburg

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:
c2cd6b7a26ebfd39a4bf7a1aac554795

Electronically Signed

Your name: Tasha Dandridge-Richburg
Signed on: 09/03/2024