

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rapid Scripts Pharmacy Corp.
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-23-1302-5730

Applicant's File No. BT23-237841

Insurer's Claim File No. 100972-01

NAIC No. 24309

ARBITRATION AWARD

I, Mona Bargnesi, 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 ["SR"]

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

Sabine Sciarotto, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Chris Fingerhut, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,605.00**, 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

This case arises out of a motor vehicle collision which occurred on November 14, 2022. The 28 year-old bicyclist allegedly injured his neck, back, shoulders, left ankle and left wrist.

The issue is whether Applicant is entitled to reimbursement for prescription medications dispensed on March 8, 2023.

Respondent denied reimbursement based on a peer review by Alan Wolf, MD, dated April 18, 2023, as well as on the basis that the amount billed exceeds the fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's ADR Center as of the date of the hearing. These submissions are the record in this case.

Cervical and lumbar spine MRIs obtained on December 29, 2022 revealed a disc herniation at L4-5 and bulges at C3-4, C4-5 and C5-6.

Assignor consulted with Ketan Vora, DO, on January 10, 2023. He complained of low back pain radiating to the right side and hip. Dr. Vora noted tenderness on palpation, muscle spasm, trigger points and decreased range of motion. He advised Assignor to start physical therapy for 4-6 weeks.

Dr. Vora administered a lumbar epidural steroid injection on January 21, 2023.

Lower extremity EMG/NCV testing performed on February 1, 2023 was normal.

On February 7, 2023, Assignor followed up with Dr. Vora "after LESI with minimal results". He complained of lower back pain at level 6-7/10, radiating to the right side and hip. Dr. Vora stated, "physical therapy, pain scales, ROM, icing therapy, decompression stretches as well as medications as needed discussed". He recommended lumbar discectomy.

On March 7, 2023, Assignor complained of neck pain radiating to the right shoulder, worsening low back pain radiating to the right side and hip with difficulty sleeping and right shoulder pain. Irfan David, NP, noted that he was "status post LESI with minimal to moderate pain relief". NP David prescribed Lidocaine 5% gel and Naproxen 500 mg on this date.

At a minimum, an insurer's burden on the issue of lack of medical necessity includes establishing a factual basis and medical rationale for the lack of medical necessity of the health care provider's services. Prime Psychological Services, P.C. v. Progressive Casualty Ins. Co., 24 Misc.3d 1244(A), 901 N.Y.S.2d 902 (Table), 2009 N.Y. Slip Op. 51868(U) at 3, 2009 WL 2780152 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009).

Alan Wolf, MD, performed a peer review on April 18, 2023. He opined that the medication was not medically necessary, stating:

It would have been appropriate to treat the claimant with standard medication for musculoskeletal pain such as over the counter pain medication or NSAIDs...did not have any past medical history that would preclude the claimant from taking first line oral analgesic agents...no indication the claimant had tried and failed a medication treatment regimen including over the counter pain medications or NSAIDs...also no indication that the claimant had developed any allergy or intolerance to any medications or was unable to swallow oral medications.

[Lidocaine]...is not indicated for musculoskeletal injuries.

I find that Dr. Wolf's peer review contains a sufficient factual basis and medical rationale to show that the medications in question were not medically necessary in this case.

When an insurer, through a peer review, presents sufficient evidence establishing a lack of medical necessity, the burden then shifts back to the applicant to present its own evidence of medical necessity. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131(A) (App. Term, 2nd Dept., 2006); Alfa Medical Supplies v. Geico General Ins. Co., 38 Misc. 3d 134(A) (App. Term, 2nd Dept., 2013).

Applicant submitted a rebuttal letter from Dr. Vora on May 21, 2024. This is deemed late in accordance with 11 N.Y.C.R.R. §65-4.2(3), as it was uploaded more than ten months after Respondent's submission.

The medical reports from Dr. Vora do not reflect that Assignor tried any first line medications. In fact, the notes specifically state, "Medications: None".

As Applicant has not adequately rebutted Dr. Wolf's opinion, Respondent's denial is upheld.

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 Erie

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

09/06/2024
(Dated)

Mona Bargnesi

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:
648445684d300dcf78bb51f685091440

Electronically Signed

Your name: Mona Bargnesi
Signed on: 09/06/2024