

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Community Medical Imaging P.C.
(Applicant)

- and -

Infinity Insurance Company
(Respondent)

AAA Case No. 17-24-1336-1247

Applicant's File No. 128702

Insurer's Claim File No. 23123827835

NAIC No. 22268

ARBITRATION AWARD

I, Jeffrey Silber, 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 08/23/2024
Declared closed by the arbitrator on 08/23/2024

Naomi Cohn, Esq. from Ursulova Law Offices P.C. participated virtually for the Applicant

Angeliki Kokkosis, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,500.57**, 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 EIP, MP, a 52-year-old female was involved in a motor vehicle accident on September 14, 2023. The EIP underwent a left shoulder MRI on 11/30/23; MRIs of the bilateral knees on 12/8/23 and a right-hand MRI on 12/22/23. Respondent denied reimbursement for all three of the MRIs based upon the peer reviews of Dr. Vito Loguidice.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in ADR Center 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 ADR Center for both parties and make my decision in reliance thereon.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case.

The burden now shifts to respondent to establish a lack of medical necessity with competent medical evidence which sets forth a clear factual basis (specifics of the claim) and medical rationale for denying the claim. *Citywide Social Work and Psych Services, PLLC v. Allstate*, 8 Misc. 3d 1025A (2005); *Healing Hands Chiropractic v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (2004).

In order to satisfy its burden of proof, the respondent must offer sufficient and credible medical evidence that addresses the standards in the applicable medical community for the services and treatment in issue; explains when such services and treatment would be medically appropriate, preferably with an understandable objective criteria; and why it was not medically necessary in the instance at issue.

Medically necessary treatments or services are "treatments or services which are appropriate, suitable, proper and conducive to the end sought by the professional health service in consultation with the patient. It means more than merely convenient or useful treatments or services, but treatments or services that are reasonable in light of the patient's injury subjective and objective evidence of the patient's complaints of pain and the goals of evaluation and treating the patient." *Fifth Avenue Pain Control Center v. Allstate Ins co*, 196 Misc. 2d 801 (Civ. Ct Queens 2003).

The insurer must establish a factual basis and medical rationale for its asserted lack of medical necessity, which is supported by evidence of the generally accepted medical/professional practices. *Beal Medea Products Inc. v. Geico*, 27 Misc. 3d 1218 (A), 910 NYS 2d 760 (Civ. Ct. Kings County 2010). Failing to mention the applicable generally accepted medical/professional standard and the plaintiff's departure from it denudes the defendant's proof of a prima facie case of lack of medical necessity. *Cambridge Medical, PC v Geico*, 18 Misc. 3d 1144 (A), 859 NYS 2d 893 (Civ. Ct. Richmond County 2008).

Respondent relies upon the peer reviews of Dr. Loguidice. Dr Loguidice argues that all of the MRIs were ordered on the initial examination by Tasheima Harrison, NP on 09/25/23. He notes that no special tests for the shoulder such as Impingement, Drop Arm, Apprehension and/or O'Brien's were performed. Tasheima Harrison, NP, the referring provider, gave no explanation as to what the purpose of the MRI studies is and

how the test results/impressions would impact the treatment plan for this particular individual. There is no indication at any point in the records how the MRIs might have influenced the treatment in any clinically significant way. There is no consideration mentioned, which would indicate that there were other treatment modalities being planned, which required the performance of the MRIs such as surgical intervention. It appears that multiple MRIs were ordered as screening tests. Furthermore, the EIP was seen again on 10/25/23 by Tasheima Harrison, NP, and there was no significant change or any evidence that the left shoulder or bilateral knees were deteriorating despite the conservative treatment being provided to the EIP.

Applicant did provide a rebuttal to the peer reviews from Dr. A. McDonnell. He argues that Dr. Loguidice stated, "it was too soon for such a recommendation, just less than two weeks after the reported accident. According to generally accepted standards of medical practice, a claimant should be rendered a course of conservative treatment for at least 4-6 weeks, after which time that claimant should be re-evaluated, and such examination should be complete and thorough...There is no evidence that this claimant's left shoulder and bilateral knees and right hand was deteriorating despite a course of conservative treatment." I would note that conservative management is often recommended by the treating physicians just as a correct course of action and the test is important prior to the completion of a conservative treatment to assist the treating physician in mapping the conservative management. Early detection often leads to prompt and accurate diagnosis, expeditious management, and avoidance of unnecessary procedures. Recognition of soft-tissue injuries impacts patient management and outcome. I believe that waiting for weeks for the conservative treatment plan to fail or for the physiological status to deteriorate in a patient who is already in immense pain due to the traumatic injuries suffered in the motor vehicle accident could ultimately be detrimental for the patient's recovery if the extent of the injury is not known beforehand. This is especially important in traumatic cases such as this where a traumatic car accident was the known cause of the patient's pain pattern. In my opinion, it was appropriate to perform the MRIs to identify the exact cause of pain in the left shoulder, bilateral knees and right hand and modify the treatment plan before there is the deterioration of the patient's neck, left shoulder, bilateral knees and right hand conditions. He then proceeds to argue why each and every MRI performed months after they were originally ordered were medically necessary and lays out a rebuttal to each MRI. Dr. Loguidice stated, "it was too soon for such a recommendation, just less than two weeks after the reported accident. According to generally accepted standards of medical practice, a claimant should be rendered a course of conservative treatment for at least 4-6 weeks, after which time that claimant should be re-evaluated, and such examination should be complete and thorough...There is no evidence that this claimant's left shoulder and bilateral knees and right hand was deteriorating despite a course of conservative treatment." I would note that conservative management is often recommended by the treating physicians just as a correct course of action and the test is important prior to the completion of a conservative treatment to assist the treating physician in mapping the conservative management. Early detection often leads to prompt and accurate diagnosis, expeditious management, and avoidance of unnecessary procedures. Recognition of soft-tissue injuries impacts patient management and outcome. I believe that waiting for weeks for the conservative treatment plan to fail or for the physiological status to deteriorate in a patient who is already in immense pain

due to the traumatic injuries suffered in the motor vehicle accident could ultimately be detrimental for the patient's recovery if the extent of the injury is not known beforehand. This is especially important in traumatic cases such as this where a traumatic car accident was the known cause of the patient's pain pattern. In my opinion, it was appropriate to perform the MRIs to identify the exact cause of pain in the left shoulder, bilateral knees and right hand and modify the treatment plan before there is the deterioration of the patient's neck, left shoulder, bilateral knees and right-hand conditions.

Dr Loguidice retorted in an addendum that it was too soon to order MRIs of left shoulder, right hand and bilateral knee, less than two weeks after the reported accident. According to generally accepted standards of medical practice, a claimant should be rendered a course of conservative treatment for at least 4-6 weeks, after which time that claimant should be re-evaluated, and such examination should be complete and thorough. It has to be noted that the MRI should not be used as a routine screening tool in all joint injuries. Its use should be reserved for clinical situations in which the diagnosis remains in doubt. MRI does not replace a thorough history and physical examination and traditional multi-view X-rays as primary diagnostic tools.

Based upon the totality of the evidence presented I find in favor of the Applicant as to the bilateral knee MRIs as there were positive orthopedic findings on the examination to warrant the MRIs. The left shoulder and right-hand MRIs were not medically necessary at the time of the initial examination as there were no significant findings at that time to warrant the MRI as contended by Dr. LoGiudice.

Applicant is awarded the amount of \$1,691.45, plus interest, an attorney's fee and the arbitration filing fee, as outlined in Sections A through D below.

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
	Community Medical Imaging P.C.	12/08/23 - 12/08/23	\$1,691.45	Awarded: \$1,691.45
	Community Medical Imaging P.C.	11/30/23 - 11/30/23	\$966.54	Denied
	Community Medical Imaging P.C.	12/22/23 - 12/22/23	\$842.58	Denied
Total			\$3,500.57	Awarded: \$1,691.45

B. The insurer shall also compute and pay the applicant interest set forth below. 02/12/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 2/12/24 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00.

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 Kings

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

09/08/2024

(Dated)

Jeffrey Silber

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:
5aba35c8e89396a95dbd185e518739dd

Electronically Signed

Your name: Jeffrey Silber
Signed on: 09/08/2024