American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Global Surgery Center LLC (Applicant)	AAA Case No.	17-23-1324-2611
	Applicant's File No.	807.375
- and -	Insurer's Claim File No.	0426111050101015
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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

   Allen Tsirelman, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

   Brittany DePrimo, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$10,176.45**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended by the applicant to $8,622.67 to conform to the appropriate fee schedule.

   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   The 39 year old EIP reported involvement in a motor vehicle accident on May 26, 2023; claimed related injury and underwent left shoulder arthroscopic surgery provided at the applicant's facility on August 21, 2023.

The applicant submitted a claim for these facility services, payment of which was timely denied by the respondent based upon a peer review by Robert Cristoforo, M.D. dated September 13, 2023. In response, the applicant submitted a rebuttal dated January 12, 2024 by Pervaiz Qureshi, M.D. who was not one of the EIP's treating medical providers.

The issue to be determined at the hearing is whether the respondent established that the medical services at issue were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

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 [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination 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 specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

In support of its contention that the medical services provided by the applicant were not medically necessary, respondent relies upon the report of the peer review by Dr. Cristoforo, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to her. Dr. Cristoforo considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

He specifically noted that the EIP received less than three months of physical therapy sessions prior to the recommendation for left shoulder arthroscopic surgery.

He concluded that there was no evidence that the EIP completed a full proper course of conservative treatment before considering left shoulder arthroscopy and that her treating physician should have considered an adequate attempt at non-operative treatment first and then, if there was no improvement the surgery should have been considered.

It was Dr. Cristoforo's opinion, supported with relevant medical literature, that the surgery was recommended prematurely and that a complete course of physical therapy could have resolved her symptoms.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the medical services at issue were not indicated for this EIP at the time they were provided. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish that the medical services at issue were medically necessary.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Qureshi, who reviewedthe bill and denial of this claim, evaluation reports by Dr. Mitamura from May 31, 2023 to August 17, 2023, MRI report of the left shoulder on June 19, 2023, the operative report and peer review and disagreed with the conclusions reached by Dr. Cristoforo.

Dr. Qureshi noted that the EIP received physical therapy treatment from May 2021 to July 2023 with continued complaints of pain and positive objective findings which did not improve with conservative treatment.

According to Dr. Qureshi, the left shoulder arthroscopy was performed on August 21, 2021 based on the EIP's history, complaints and clinical findings in accordance with generally accepted standards of care.

Dr. Qureshi supported, with relevant medical citations, his opinion that the left shoulder arthroscopy was medically necessary at the time it was provided.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented in the peer review by Dr. Cristoforo and the rebuttal by Dr. Qureshi on behalf of the applicant.

In this instance, the rebuttal meaningfully refers to and rebuts the findings of Dr. Cristoforo. In addition, the medical reports submitted are sufficient to establish the medical necessity for the services at issue.

Based on the foregoing, I find that the respondent has failed to establish that the medical services at issue were not medically necessary.

Accordingly, the applicant is awarded $8,622.67 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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**	**Amount Amended**	**Status**
	Global Surgery Center LLC	**08/21/23 - 08/21/23**	**$10,176.45**	**$8,622.67**	**Awarded: $8,622.67**
Total			**$10,176.45**		**Awarded: $8,622.67**

B. The insurer shall also compute and pay the applicant interest set forth below. 11/07/2023 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 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's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of $1,360.00. See 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 CT
SS :
County of Fairfield

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

09/09/2024
(Dated)

Anne Malone

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:
904ffad616cd521b70f0474eadc3ab32

Electronically Signed

Your name: Anne Malone
Signed on: 09/09/2024