

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All Boro Medical Rehabilitation PLLC
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

| | |
|--------------------------|-----------------|
| AAA Case No. | 17-24-1343-2426 |
| Applicant's File No. | 202403113506063 |
| Insurer's Claim File No. | 1021332-01 |
| NAIC No. | 16616 |

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

George Lewis, Esq. from Law Offices of George T. Lewis, Jr., PC participated virtually for the Applicant

Fontini Lambrianidis, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$239.16**, 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 45 year old EIP reported involvement in a motor vehicle accident on February 14, 2018; claimed related injury and underwent physical therapy treatment provided by the applicant from October 16, 2023 to November 8, 2023.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on the IME of the EIP by Joseph Margulies, M.D. which was performed on September 20, 2018. The IME cut-off was effective on October 14, 2018.

The issue to be determined at the hearing is whether the respondent established that the medical services provided by the applicant 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 in 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.

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 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/her findings; and 3) the peer review report fails to provide 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.)

To support its contention that the services provided to the EIP were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Margulies, which was objectively negative and unremarkable. Range of motion was determined with the assistance of a goniometer. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Margulies performed a complete and comprehensive examination of the EIP which did not identify any objective positive findings and determined that his injuries were resolved.

Based upon the physical examination and medical records reviewed, Dr. Margulies noted that at the time of the subject accident, the EIP missed three

weeks from work as a cook and that at the time of the IME he was working at the same job with limited duties, part time. Dr. Margulies determined that despite his subjective complaints, the EIP was not disabled and that he could perform his activities of daily living and continue with his present employment. It was Dr. Margulies' opinion that there was no medical necessity for further orthopedic treatment or physical therapy, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the services provided by the applicant were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

In response to the report of the physical examination of the EIP by Dr. Margulies, the applicant relied upon the submissions, including a comprehensive evaluation on February 26, 2018 and follow-up reports dated April 13, 2018, June 8, 2018 and June 29, 2018 which documented subjective complaints of pain and positive objective testing including some limited range of motion in the cervical and lumbar spine. It appears from the medical records that the EIP underwent a lumbar epidural steroid injection on June 15, 2018. The recommendation was to continue physical therapy and to be re-evaluated in one month.

At an evaluation on August 10, 2018, Dr. Weiner recommended that the EIP start a course of physical therapy. There was no recommendation for a follow-up visit. Based on the medical records submitted it appears that the next examination of the EIP was conducted on December 14, 2018, followed by a January 31, 2020 evaluation.

Based on the foregoing, the applicant failed to document sufficient contemporaneous objective findings that would warrant continued treatment after the IME cut-off date and has not met the burden of persuasion in rebuttal. The medical records submitted do not meaningfully address the arguments that are raised in the IME report and are insufficient to overcome the burden of production established by respondent.

Therefore, the respondent has established that the services at issue were not medically necessary.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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:
c5f9906b38c25944e07437fb828d557c

Electronically Signed

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