

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LR Medical PLLC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-23-1329-3098

Applicant's File No. 00125274

Insurer's Claim File No. 694520

NAIC No. Self-Insured

ARBITRATION AWARD

I, Jeffrey Held, 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: Eligible Injured Person "EIP"

1. Hearing(s) held on 07/18/2024
Declared closed by the arbitrator on 08/12/2024

Mikhail Guseynov, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Jeffrey Kadushin, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$634.89**, 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

In dispute is the medical necessity of health service benefits that include, inter alia, cervical epidural steroid injections and trigger point injections for date of service July 3, 2023, as performed as part of a treatment/diagnostic plan for the EIP a 26-year-old male with a history of a March 11, 2023 motor vehicle accident as a pedestrian/cyclist, denied in a concededly timely manner based upon a peer review submitted by Jeffery Beer, MD. Applicant relies, in part, on a rebuttal from Leonid Reyfman, MD.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR 65-4.5 (o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The hearing was conducted via Zoom and is based upon the documents that appear in the ADR center, as well as the arguments and concessions made at the time of the hearing. One witness was presented by Respondent, to wit: Jeffry Beer, MD.

Insofar as claims for health service benefits must be medically necessary (see, N.Y. Insurance Law § 5102[a] (McKinney Supp. 2002), *a fortiori*, Respondent's ability to establish that the services were not medically necessary, is a valid defense. The defense may properly be established with a peer review. See, Jacob Nir, as assignee of John Doe and Allstate, 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005). However, the peer review is required to "set forth a sufficiently detailed factual basis and medical rationale for the claims rejection" and is "insufficient if it is unsupported by or controverted by evidence of medical standards." See, Jacob Nir, as assignee of John Doe and Allstate, *supra*. Further, "(a) no-fault insurer defending a denial of first-party benefits on the ground that the billed-for services were not 'medically necessary' must at least show that the services were inconsistent with generally accepted medical/professional practice. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden of proving that the services were not 'medically necessary'." CityWide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 609, 777 N.Y.S.2d 241, 242 (Civ. Ct. Kings Co. 2004). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *Id.* at 616, 777 N.Y.S.2d at 248.

Applicant, as assignee of the EIP, 26-year-old male with a history of a March 11, 2023 motor vehicle accident as a pedestrian/cyclist, commenced proceeding seeking payment/reimbursement of a claim for cervical epidural steroid injections and trigger point injections for date of service July 3, 2023, with a disputed balance of \$634.89. The claim was denied in a concededly timely manner based upon a peer review

submitted by Jeffry Beer, MD, who further testified on behalf of the Respondent.

It is noted that the claim was heard and argued with multiple linked claims for additional services that include, inter alia, lumbar and cervical percutaneous discectomies and lumbar epidural injections.

Turning first to the peer review, same includes, inter alia, a statement of purpose, delineation of records reviewed, a history of the claim and discussion of medical necessity, supported by medical authority and submitted under penalties of perjury.

In sum and substance, the peer reviewer opined that notwithstanding the complaints and examination findings noted in a June 19, 2023 examination, including, inter alia, decreased cervical and lumbar motion and positive cervical compression and Spurling's tests, medical necessity was not established given the MRI finding, which were noted to include multiple disc bulging and a small central herniation," albeit without "foraminal or central canal stenosis." The peer reviewer further opined that there was no "medical justification" for a "concurrent multilevel trigger point injection procedure," finding that "a less interventional trial of trigger point therapy should be exhausted prior to proceeding with a spinal injection approach."

It is further noted that the peer reviewer relied on issues of lack of efficacy finding, with citation to medical authorities.

Applicant relies, in part, on a rebuttal from Dr. Reyfman. The rebuttal includes, inter alia, a statement of purpose, summary of the case history, including examination and diagnostic findings, a summary of the peer reviewer's findings, with rebuttal argument thereto, also supported by medical authorities.

As noted, Dr. Beer testified at a continued hearing date in further support of his opinion regarding the lack of medical necessity of the portion of the treatment plan at issue.

At the conclusion of the hearing, the following disposition was entered:

"Parties to submit a post-hearing memorandum inclusive of a summary of the hearing witnesses' testimony, with particular emphasis on any supplemental and/or explanatory testimony relative to the findings and opinion rendered in the respective peer reviews, together with argument on the issue of medical necessity."

In accordance therewith, each side submitted a posthearing memo further summarizing Dr. Beer's hearing testimony, with supporting argument. (See, parties post-hearing memoranda, covering the within claim and linked claims heard herewith.)

Based upon the evidence adduced in this claim as well as any arguments under concessions made at the time of the hearing I make the following findings and award:

Initially, while substantially reliant on lack of efficacy ground, I will assume *arguendo* the facial sufficiency of the peer review, i.e. inclusive of a sufficient "factual basis and medical rationale" to support the opinion rendered therein.

The foregoing notwithstanding, I find that the rebuttal is sufficiently comprehensive and persuasive to overcome the opinion rendered in the peer review and support a medical necessity finding, particularly given the limited persuasive weight that I ascribe to the peer review.

Finally, I find that the rebuttal carries the weight of the evidence for the Applicant, even when considered in conjunction with the peer reviewer's hearing testimony.

In so holding, I find that a peer reviewer's hearing testimony, even when credible, cannot "re-write" a peer review that has already been found to be lacking in persuasive weight as same would, at minimum, be prejudicial to Applicant, who has already submitted a rebuttal to the peer review. (The foregoing would be similarly objectionable to an addendum that went beyond responding a rebuttal.)

At bar, I find that the hearing testimony, including as to lack of "distinct trigger points" (See, Respondent's post-hearing submission), may be deemed an example of the foregoing.

Apart from the foregoing, I find that I am persuaded by Applicant's post-hearing memorandum, in which it is argued, in part, that the peer reviewer's hearing testimony was contradicted by literature cited in his peer review; the limitation of the peer reviewer's record review, and reliance on portions of the rebuttal addressing the necessity of performing the TPI and ESI together.

Award for Applicant in the amount of \$634.89, plus interest and attorney's fees, in accord with LMK Psychological Services PC v. State Farm Mutual Auto Insurance Company, 12 N.Y. 3d 217, 879 N.Y.S. 2d 14 (2009), and as computed as per opinion letter of the Office of General Counsel of the NY Insurance Department No. 3-10-04 [Oct. 2003]. Applicant is further awarded return of filing fee. .

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
	LR Medical	07/03/23 -		Awarded:

	PLLC	07/03/23	\$634.89	\$634.89
Total			\$634.89	Awarded: \$634.89

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/18/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The interest rate shall be 2% per month, simple, on a pro rata basis using a 30 day month. The insurer shall compute and pay Applicant from December 18, 2023, the date of filing, to July 18, 2024, and from August 12, 2024 to the date of payment of the award.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with 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 NY

SS :

County of New York (NY)

I, Jeffrey Held, 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)

Jeffrey Held

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:

f1c31da7f1f891bf58508f2a93c3071f

Electronically Signed

Your name: Jeffrey Held
Signed on: 09/09/2024