

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Ambulatory Surgery Center LLC
(Applicant)

- and -

State Farm Fire & Casualty Company
(Respondent)

AAA Case No. 17-24-1332-7449

Applicant's File No. 00127865

Insurer's Claim File No. 32-45T2-14H

NAIC No. 25143

ARBITRATION AWARD

I, Susan Mandiberg, 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: The EIP

1. Hearing(s) held on 09/11/2024
Declared closed by the arbitrator on 09/11/2024

Justin Rosenbaum, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Matthew Kelly, Esq. from Sarah C. Varghese & Associates f/k/a James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,259.33**, 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 30-year-old male EIP was a driver of a vehicle that was involved in the instant motor vehicle accident on 2/19/23. Presently in dispute is billing for facility fees for lumbar spine injections performed on date of service 11/21/23. Respondent timely denied reimbursement for this billing premised upon the IME examination performed by Vijay Sidhwani, D.O. on 7/31/23, after which Respondent terminated No-Fault benefits effective 8/30/23. Therefore, the issue to be determined in this case is whether the services in dispute were medically necessary vis-à-vis the IME exam upon which Respondent's denial is premised. No Fee Schedule or policy exhaustion issues were raised regarding the instant billing at the time of the Hearing.

4. Findings, Conclusions, and Basis Therefor

This case was decided after due consideration of the arguments of the parties via Zoom and after a thorough review of the submissions and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein. This case involves the billing for facility fees for lumbar spine injections performed on date of service 11/21/23. Respondent timely denied reimbursement for this billing premised upon the IME examination performed by Vijay Sidhwani, D.O. on 7/31/23, after which Respondent terminated No-Fault benefits effective 8/30/23.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. In addition, Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Ortho. Rehab. a/a/o "I.B." v. Country-Wide Ins. Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at his decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents." Furthermore, it is within the province of an arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. See: *Mott v. State Farm*, 55 NY2d 224 (1982).

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. *Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v General Assurance Co.*, 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2nd Dept., June 2, 2006; See: Insurance Law §5106 a, *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742, 774 N.Y.S.2d 564 (2004); *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2nd & 11th Jud Dists.)]. See also: 11 NYCRR §65-1.1, *Vista Surgical Supplies, Inc. v. Metropolitan Prop. and Cas. Ins. Co.*, 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006. Based upon the evidence submitted, I find that Applicant has established its prima facie case.

The evidence herein demonstrates that the 30-year-old male EIP was a driver of a vehicle that was involved in the instant motor vehicle accident on 2/19/23. Following the accident, the EIP did not seek/receive emergent treatment. Thereafter, the EIP commenced a course of conservative care treatments including physical therapy, pain medication, and neurologic, orthopedic, physical medicine & rehabilitation, and pain management treatment. The EIP underwent epidural steroid injections to his cervical spine following examination on 5/12/23. Diagnostic testing/MRI scans were performed

and the EIP received durable medical equipment. There are examination reports in evidence dated 4/24/23, 5/8/23, 5/12/23, 11/20/23 and 11/21/23 from the EIP's pain management providers. All the relevant medical reports, treatment notes and documents were carefully reviewed and considered, as well as a peer review rebuttal generated by Alan Zats, M.D.

Respondent timely denied reimbursement for the billing in dispute pursuant to an orthopedic IME examination, conducted on by Vijay Sidhwani, D.O. At the time of the exam, the EIP complained of mid and lower back pain. The IME report indicates that the EIP ambulated with a normal gait and all range of motion measurements, and were calibrated pursuant to AMA guidelines, were reportedly within normal limits. In addition to examining the EIP, Dr. Sidhwani also reviewed a number of the EIP's medical reports/documents. The examination revealed normal muscle strength and there were normal deep tendon reflexes. All the objective/provocative tests performed yielded normal findings. Based upon the findings of exam, Dr. Sidhwani diagnosed the EIP with resolved sprains/strains of the lumbar spine and cervical spine, and resolved sprains of the bialteral shoulders, respectively. As a result of the findings upon exam, Dr. Sidhwani opined that there was no need for further pain management treatment or physical therapy, and no necessity for follow-up, for diagnostic testing, nerve blocks, durable medical equipment, household help, special transportation, massage therapy, or prescription medication, respectfully. Based upon this IME, Respondent terminated benefits effective 8/30/23.

The burden is on the insurer to prove that the medical services were unnecessary. See: Behavioral Diagnostics v. Allstate Ins. Co., 3 Misc. 3d 246, 776 N.Y.S.2d 178, 2004 Slip Op. 24041 (Civ. Ct. Kings Co., 2004); A.B. Medical Services v. Geico Ins., 2 Misc. 3d 26, 773 N.Y.S.2d 773, 2003 Slip Op 23949 (App Term, 2nd Dept., 2003). See also: Elm Medical P.C. v. American Home Assurance Co., 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 (Civ. Ct., Kings Co., 2003); Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co., 196 Misc. 2d 801,766 NYS2d 748 (Civ. Ct., Queens Co., 2003). In the instant matter, after a review of the totality of the evidence, I find that the medical necessity of the services in dispute has been credibly refuted by the IME report submitted herein. Indeed, a denial claiming lack of medical necessity must be supported by a peer review, IME report or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. See: Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc3d 975; Citywide Social Work, et al. v. Travelers Indem. Co., 3 Misc3d 608; Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc3d 128(A).

After careful review of the totality of the credible evidence, I find, on balance, that the IME of Dr. Sidhwani is more credible and persuasive than the peer review rebuttal upon which Applicant relies. While the peer review rebuttal indicates that the EIP required further treatment based upon the EIP's MRI findings and subjective complaints made at the time of the IME, the IME physician, who performed an actual physical examination at the time of the IME, determined otherwise. While Dr. Zats casts doubt upon the normal ranges of motion determined with the use of a goniometer at the time of the IME, he fails to rely upon any contemporaneous evaluation reports or treatment notes that might contradict such findings. Further, he fails to reference any actual examination that he performed at/about the time of this exam that would contest the findings of the

IME. Although Dr. Zats asserts that "it was apparent that the patient still exhibited symptoms of neck and lower back pain, during and after the IME" there are no medical reports in evidence to substantiate this position. As discussed with the parties at the time of the Hearing, there are examination reports in evidence dated 5/8/23 and dated 5/12/23 (both from Dr. Shulkin), which were performed approximately 2 ½ months before the 7/31/23 IME exam. Even though Dr. Shulkin's 5/12/23 exam recommended that the EIP present for a follow-up/re-evaluation two (2) weeks thereafter - stating "Patient will be reassessed in two weeks after injection for evaluation of improvement in function and temporary or sustained pain relief" - it was not until 11/20/23 (and 11/21/23) that the EIP was again examined, this time by Dr. Zats. While the 11/20/23 report indicates that the EIP presented for a follow-up "after last being seen in May after having a CESI..." there is no explanation, as Respondent herein asserts, why there was a gap in treatment of approximately six (6) months in duration, particularly in light of Dr. Zats' contentions that the EIP required additional care, in part based upon his complaints at the time of the 8/31/23 IME exam. This large gap in treatment is not addressed in any way in the rebuttal, nor are any findings referenced or addressed that would, in my opinion, credibly rebut the findings as denoted at the time of the 7/31/23 IME. In fact, the months-long lapse in time between evaluations and treatment, is consistent with the conclusion reached by the IME physician, in that he determined that the EIP did not require further treatment following the 7/31/23 exam. In sum, I find that Respondent's denial premised upon this IME should be sustained.

Conclusion:

Based upon the foregoing, after careful review of the totality of the credible evidence, and for the reasons set forth herein, it is determined that Respondent's denial/IME exam credibly refutes Applicant's prima facie case of medical necessity and are substantiated by the credible evidence.

Accordingly, this claim is denied.

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 Nassau

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

09/13/2024
(Dated)

Susan Mandiberg

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:
12b26b37a4b84e9a36f22285cf342e2f

Electronically Signed

Your name: Susan Mandiberg
Signed on: 09/13/2024