

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Bensonhurst PC
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1342-9030

Applicant's File No. McMillanW

Insurer's Claim File No. 23-7647067

NAIC No. 24279

ARBITRATION AWARD

I, Ellen Cutler-Igoe, 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: Assignor

1. Hearing(s) held on 09/05/2024
Declared closed by the arbitrator on 09/05/2024

Michael Tomforde, Esq. from Dash Law Firm, PC participated virtually for the Applicant

Charles Fishbaum, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,003.20**, 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

Applicant seeks payment of charges for a lumbar spine MRI performed for Assignor, a 54-year-old-male passenger, on September 6, 2023, as a result of injuries Assignor sustained following a motor vehicle accident that occurred on May 28, 2023. Respondent timely denied payment of Applicant's charges predicated upon the findings of its consultant, Dr. Aruna Senevirante's, Independent Medical Evaluation (IME) dated August 23, 2023 with a correlating global termination date of Assignor's orthopedic related no-fault benefits effective September 5, 2023. The issue is whether Respondent established its lack of medical necessity defense for the lumbar spine MRI.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the parties as contained in the electronic case file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. Without opposition, documents uploaded to the electronic case file as of the hearing date were incorporated into the record. I have reviewed the exhibits for both parties and make my decision in reliance thereon. The hearing was conducted on a zoom platform.

Pursuant to 11 NYCRR 65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. 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.

Assignor, a 54-year-old male passenger, sustained multiple injuries following a motor vehicle accident that occurred on May 28, 2023. The record and linked decision AAA Case No.: 17-24-1333-4757 reflects that Assignor presented to a Dr. Hiram Emmanuel Luigi-Martinez on June 1, 2023 for chief complaints of headaches, and pain in the cervical, shoulder, thoracic, lumbar and knee regions. Clinical impressions included unspecified headache, acute cervical sprain, acute lumbar myofascial strain, acute thoracic back pain, impingement syndrome of the right shoulder, impingement of the left shoulder, and internal derangement of the bilateral knees. Recommendations included implementation of a multi-modality physical therapy program, diagnostic testing to rule out nerve compression, functional capacity testing, trigger point injections, MRIs of the cervical spine, thoracic spine, lumbar spine, bilateral shoulders, bilateral knees and pharmaceutical interventions. Applicant performed a lumbar spine MRI on September 6, 2023 and seeks payment of charges totaling \$1,003.20. Upon receipt of Applicant's NF3, Respondent timely denied payment predicated upon the findings of its consultant, Dr. Aruna Senevirante's, Independent Medical Examination (IME) dated August 23, 2023 with a correlating termination date of Assignor's orthopedic related no fault benefits as of September 5, 2023. Dr. Senevirante proffered an analysis of Assignor's medical condition on July 14, 2022 as follows:

"Based on my examination and clinical experience, orthopedic treatment is not medically necessary from an orthopedic viewpoint to any of the examined areas. There is no medical necessity for physical therapy, prescription medication, office visits, surgery or injections to any of the examined areas. It is my opinion that there is no medical necessity for massage therapy, extracorporeal shockwave therapy, diagnostic testing, household help, durable medical equipment or special medical transportation to any of the examined areas. The claimant's subjective complaints were not correlated by objective findings."

In opposition to the IME findings, Applicant relied on the totality of the record including Dr. Luigi-Martinez's re-evaluation of Assignor dated July 21, 2023.

Analysis

It is well settled that a health care provider establishes its prima facie entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. See, Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 (2004). In the case at bar, Applicant met its initial burden of proof, thus, the burden shifts to Respondent to establish that it timely and properly denied the claim(s), and to submit evidence to sustain the basis of its denial(s).

If an insurer asserts that the medical test, treatment, supply, or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. See, *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 (App Term, 2nd & 11th Jud Dists. 2003). An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. See in general, *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

After a thorough review of the evidence and arguments raised by the parties, I am persuaded that Applicant's medical records viably negate Dr. Senevirante's IME conclusion. Assignor's medical evaluations including treatment notes contemporaneous to the IME record symptomatology in correlation with Dr. Luig-Marinez's clinical assessment of acute cervical sprain, bilateral shoulder injury, acute lumbar myofascial strain, acute thoracic back pain, impingement syndrome of the right shoulder, impingement syndrome of the left shoulder, and internal derangement of the bilateral knees. Moreover, results of the lumbar spine imaging studies demonstrated L1-2 posterior subligamentous disc bulging, L2-3 broad based posterior subligamentous disc bulging, L3-4 posterior broad-based central disc bulge with peripheral increased bulging into the anteroinferior foramina, L4-5 posterior broad-based central disc herniation impressing the thecal sac extending peripherally to narrow the bilateral foramina, and L5-S1 posterior broad-based disc herniation impressing the thecal sac and extending into the bilateral foramina. Therefore, as of the IME and contrary to Dr. Senevirante's conclusion, Assignor had not achieved maximum medical improvement. Deference is granted to the medical provider's treatment protocol for Assignor.

Accordingly, for the foregoing reasons, Applicant is awarded payment in the amount \$1,003.20.

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
	Stand Up MRI of Bensonhurst PC	09/06/23 - 09/06/23	\$1,003.20	Awarded: \$1,003.20
Total			\$1,003.20	Awarded: \$1,003.20

B. The insurer shall also compute and pay the applicant interest set forth below. 04/04/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

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

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 Nassau

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

09/18/2024
(Dated)

Ellen Cutler-Igoe

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:
9a3a262468c3478be67977acdc3f6272

Electronically Signed

Your name: Ellen Cutler-Igoe
Signed on: 09/18/2024