

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Great Neck
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-24-1345-4236

Applicant's File No. _KoliMa_

Insurer's Claim File No. 106178-04

NAIC No. 24309

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

Christopher Fingerhut, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,533.74**, 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 cervical, thoracic and lumbar spine MRI studies performed for Assignor, a 23-year-old male passenger, on February 14, 2023, as a result of injuries Assignor sustained following a motor vehicle accident that occurred on December 3, 2023. Respondent timely denied payment of Applicant's charges predicated upon the findings of its consultant, Dr. Neil Ganz's, peer review report dated March 26, 2024. The issue is whether Respondent established its medical necessity defense to nonpayment.

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 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 23-year-old male passenger, sustained multiple injuries to his spinal regions following a motor vehicle accident that occurred on December 3, 2023. On December 8, 2023, Assignor presented to Dr. Shane Raymond at Mendoza Chiropractic Office for an initial chiropractic evaluation. At that time, he complained of 8/10 neck pain radiating to bilateral trapezii, 8/10 mid-back pain and 9/10 lower back pain. The pain was described as constant, sharp and throbbing and it was associated with pressure, tenderness, tightness/stiffness, muscle soreness, muscle contraction and muscle spasm discomfort. The pain was aggravated by almost any movement, especially bending, carrying, lifting, changing positions, climbing stairs, extended computer use, getting in or out of a car, looking over shoulder, pulling, pushing, reaching, repetitive motions, turning, twisting, finding a comfortable position to sleep, exercise activities, and any movements that include flexion, extension, rotation and lateral bending. Examination of the cervical and thoracolumbar spine revealed pain and tenderness upon palpation, spinal restrictions/subluxations, moderate-to-severe muscle spasms, decreased range of motion with pain and stiffness as well as positive Maximum Foramina Compression test, Jackson Foraminal Compression test, Spurling's test, Shoulder Depression test, Distraction test, Soto-Hall test, Kemp's test, Straight Leg Raise test, Ely's test, Iliac Compression test, Nachlas test, Yeoman's test, Gaenslen's test, and Fabere/Patrick's test. Clinical impressions were cervical disc displacement, cervical subluxation complex at multiple sites, thoracic subluxation complex at multiple sites, lumbar subluxation complex at multiple sites, pelvic subluxation, sacral subluxation and possible lumbar disc displacement. Therefore, Assignor was recommended to initiate participation in chiropractic treatment and to schedule a physiatrist consultation. X-rays of the cervical spine and thoracic spine revealed severe loss of cervical lordosis and subluxation complex at bilateral C1 and C2-C7 levels and subluxation complex at bilateral T1-T5 and T6-T12 levels.

Chiropractic evaluation dated February 9, 2024 indicated continued moderate to severe symptomatology. Therefore, Dr. Raymond referred Assignor for MRI studies of the cervical, thoracic and lumbar spine to rule out intervertebral disc displacement due to

the patient's persistent subjective complaints and objective findings on physical examination. Applicant performed the imaging studies on February 14, 2024.

MRI of the cervical spine revealed C3/4 posterior subligamentous disc bulge deforming the ventral thecal sac, C4/5 posterior annular disc bulge remains deforming the ventral thecal sac, C5/6 posterior subligamentous disc bulge remains flattening the ventral thecal sac, and C6/7 posterior subligamentous disc bulge peripherally approaching the neural foramina. MRI of the thoracic spine revealed T7/8 and T8/9 peripheral left-sided disc herniations approaching the left neural foramina. MRI of the lumbar spine revealed L3/4 and L4/5 posterior annular disc bulges flattening the ventral thecal sac with proximal right foraminal extension below the level of the exiting nerve roots and narrowing of the neural foramina, L5/S1 central-right paracentral disc herniation deforming the ventral thecal sac and impinging upon the right greater than left traversing S1 nerve roots with narrowing of the neural foramina, and straightening of the normal lumbar lordosis and curvature convex to the right at the upper lumbar levels and to the left at the lower lumbar levels.

Upon receipt of Applicant's claim for the cervical, thoracic and lumbar spine MRIs, Respondent timely denied payment of Applicant's charges predicated upon the peer review findings of Dr. Neil Ganz dated March 26, 2024. Dr. Ganz, proffered in part, the following:

"MRI evaluations are customarily performed when a red flag is noted on history and examination that raises the suspicion of a dangerous spinal condition. Such red flags include fracture, dislocation, infection or tumor. According to the available patient records, none of these conditions were suspected. There is no demonstration of a differential diagnosis and no indication of a diagnostic dilemma to warrant these MRI studies. There is no discussion as to how these cervical, thoracic and lumbar spine MRI studies altered and impacted the future chiropractic treatment options of Assignor. It is the opinion of Current Medical Diagnosis and Treatment, 42nd edition for 2003, page 1676, "MRI provides exquisite anatomic detail but should be reserved for patients in whom the diagnostic information would modify the on-going therapy."

In opposition to the peer review findings, Applicant relied on a rebuttal to the peer review prepared by Dr. Michael Silver dated June 28, 2024.

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. *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452. 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 findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, *Nir v. Allstate*, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005).

Reliance on rebuttal documentation will be weighed in light of the documentary proofs and arguments presented at the arbitration. A "rebuttal report" by an Applicant in opposition to a peer review is insufficient if it merely consists of the preparer's conclusory statement that he disagrees with the opinion of the peer review doctor that there was no medical necessity for the services rendered, and does not meaningfully refer to, or discuss, the determination of the peer review doctor. See, *Pan Chiropractic, P.C. v. Mercury Ins. Co.*, 24 Misc.3d 136(A), 897 N.Y.S.2d 671 (Table), 2009 N.Y. Slip Op. 51495(U) (App. Term 2d, 11 & 13 Dists. July 9, 2009).

After a thorough review of the record and consideration of the parties' oral arguments, I find Applicant's assertion viably negates Dr. Ganz's peer review findings and conclusions. Assignor was referred for MRI studies of the cervical, thoracic and lumbar spine to rule out intervertebral disc displacement due to Assignor's persistent subjective complaints and objective findings on physical examination. The referral established that the results of the MRIs would identify the non-improving spinal symptoms and demonstrate injuries to muscles, ligaments, and other soft tissue, which in turn led to formulating a correct and complete diagnosis for a proper treatment plan. I acknowledge the litany of medical citations referenced by the peer reviewer. However, the medical summations for each either bolster Applicant's medical necessity contention or are nonspecific to Assignor's treatment protocol in relation to his injuries.

Accordingly, for the foregoing reasons, Applicant is awarded payment in the amount of \$2,533.74.

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 Great Neck	02/14/24 - 02/14/24	\$2,533.74	Awarded: \$2,533.74
Total			\$2,533.74	Awarded: \$2,533.74

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/24/2024 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.

09/21/2024

(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:
fa90c6cd25d788db4d3b8621a8d5134c

Electronically Signed

Your name: Ellen Cutler-Igoe
Signed on: 09/21/2024