

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Fast Care Medical Diagnostics PLLC
(Applicant)

- and -

Unitrin Safeguard Insurance Company
(Respondent)

AAA Case No. 17-24-1343-1439

Applicant's File No. ZJ161706091

Insurer's Claim File No. 23123625745

NAIC No. 10914

ARBITRATION AWARD

I, Natia Pavel, 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 (CL)

1. Hearing(s) held on 08/22/2024
Declared closed by the arbitrator on 08/22/2024

Mark Fenelon Esq., from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

Arthur De Martini Esq., from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,728.95**, 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 Applicant is seeking reimbursement in the sum of \$1,728.95 representing MRIs of the cervical and lumbar spine that were rendered to the EIP on 6/9/23. The EIP was a 50-year-old female was a restrained driver in a motor vehicle accident on 04/25/2023. Her car was hit from the left side by another vehicle while crossing an intersection. As a consequence of the accident, she suffered multiple injuries, including injuries to her neck and lower back. On 04/26/2023, the patient presented to Dr. Komerath for an initial evaluation with the pertinent complaint of sharp neck pain rated at 8/10 radiating to bilateral upper extremities with weakness and sharp lower back pain rated at 8/10 radiating to bilateral lower extremities with weakness. The pain was aggravated by prolonged

bending and movement. Examination of the cervical spine revealed tenderness in cervical paraspinal muscles, moderately restricted and painful range of motion and painful spasms of the paravertebral muscles of the cervical spine. Examination of the lumbar spine tenderness in lumbar paraspinal muscles, moderately restricted and painful range of motion, painful spasms of the paravertebral muscles of the lumbar spine and positive Straight Leg Raising Test at 70 degrees bilaterally. The patient was recommended physical therapy and prescribed pain medications. The patient was also subsequently referred for MRI studies of the cervical spine and lumbar spine. The Applicant submitted this claim to the carrier seeking reimbursement for the MRIs of the cervical and lumbar spine. The Respondent timely denied this claim based on the defense of lack of medical necessity. To that end, the carrier relied on the peer review report authored by Dr. Ajendra Sohal MD as well as an addendum by Dr. Sohal dated 8/6/24. The Applicant relied on the formal rebuttal by Dr. Drora Hirsch MD dated 5/8/24. The parties agreed that the sole issue is whether the services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all of the documents in the Electronic Case Folder which is maintained by the American Arbitration Association. This decision is based upon the documents reviewed as well as the arguments made by the parties' representatives at the arbitration hearing.

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claim to the carrier seeking reimbursement for the MRIs of the cervical and lumbar spine. The Respondent timely denied this claim based on the defense of lack of medical necessity. To that end, the carrier relied on the peer review report authored by Dr. Ajendra Sohal MD as well as an addendum by Dr. Sohal dated 8/6/24. The Applicant relied on the formal rebuttal by Dr. Hirsch MD dated 5/8/24. The parties agreed that the sole issue is whether the services were medically necessary.

Dr. Sohal reviewed the medical reports and argued that the MRIs were prescribed prematurely and therefore were not medically necessary. The MRIs were prescribed on the initial visit before the claimant had an opportunity to undergo conservative care. The standard of care is at least 6-8 weeks of conservative care prior to the MRIs. There was no evidence of radiculopathy or neuropathy to warrant these MRIs on such an urgent basis. Therefore, the MRIs were not medically warranted in this case.

A denial premised on a lack of medical necessity must be supported by competent evidence such as an IME or peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim (*Amaze Medical Supply, Inc. v. Allstate Ins. Co.*, 2 Misc3d 134(A), 2004 NY Slip Op 50211(U), 2004 WL 758248 [App Term 2d and 11 Jud Dists, 2004]). The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. *Kingsborough Jewish Med. Ctr. v. All State Ins. Co.* 2009 NY Slip Op. 00351 (2d. Dep't, January 20, 2009), See also *Channel Chiropractic PC v. Country Wide Ins. Co.* 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See *Vladimir Zlatnick, M.D. v. Travelers Indem. Co.* 2006 NY Slip Op. (50963U) (App. Term 1st Dep't, 2006). See also *Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co.* 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

In this case, I find the Respondent has met its initial burden of proof to deny the Applicant's charges with this peer review report. Therefore, the burden now shifts to the Applicant to submit evidence that overcomes the peer review and demonstrates the medical necessity for the disputed services.

In this matter, the Applicant has submitted the formal rebuttal by Dr. Drora Hirsch MD dated 5/18/24. Dr. Hirsch outlined the claimant's examination findings and determined that the MRIs were indeed medically necessary. Dr. Hirsch argued that the peer reviewer failed to carefully review the medical reports when determining that the MRIs were not indicated. "I would like to state that probably the peer doctor has taken a superficial look at the medical records of the patient, otherwise he would not have raised such an argument. Nevertheless, in this case, the need for cervical and lumbar spine MRIs was based on the claimant's history and physical findings during the examination performed by Dr. Komerath, which did reflect significant findings including radiculopathy and neurological

deficits indicating possibility of disc herniation and radiculopathy when the patient had following subjective complaints and positive objective findings- • sharp neck pain rated at 8/10 radiating to bilateral upper extremities with weakness and sharp lower back pain rated at 8/10 radiating to bilateral lower extremities with weakness that were aggravated by prolonged bending and movement {Please note that this a case of "radiculopathy caused by an injury near the root of a spinal nerve and causes sharp pain as well as loss of sensation in different parts of the upper and lower extremities where the damaged roots are located. Radiculopathy is often secondary to compression or inflammation of a spinal nerve and hence requires MRI testing as it can show the appearance of the spinal cord and nerve roots, so that the physician can plan the treatment accordingly} • moderately restricted and painful range of motion of the cervical spine and lumbar spine; • tenderness in cervical and lumbar paraspinal muscles; • painful spasms of the paravertebral muscles of the cervical spine and lumbar spine; and • positive Straight Leg Raising Test at 70 degrees bilaterally (which is suggestive of disc lesion, nerve root impingement or disc herniation in the lumbar spine). Certainly, these significant findings indicate possible nerve root involvement and radiculopathy, suggesting that this patient might need surgery down the road to repair any herniated discs or might require epidurals." Dr. Hirsch cited to medical literature to support her opinion in this matter.

After a review of the evidence submitted, I find in the Respondent's favor. The MRI was prescribed on the initial visit, just one day after the date of accident. Moreover, there was no clinical examination by the referring physician and no red flags to warrant MRI testing on such an urgent basis. I find the peer review report was cogent and credible. I do not find the Applicant's rebuttal (by a non-treating provider) to be sufficient to meaningfully rebut the peer review in this case. Accordingly, the Respondent's denial sustained and the Applicant's 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, Natia Pavel, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/23/2024

(Dated)

Natia Pavel

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:
750caa7284f6f45faf0b311ac8dac462

Electronically Signed

Your name: Natia Pavel
Signed on: 09/23/2024