

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab Services
(Applicant)

- and -

State National Insurance Company
(Respondent)

AAA Case No. 17-24-1340-2859

Applicant's File No. 24-54710

Insurer's Claim File No. 9012-01

NAIC No. Self-Insured

ARBITRATION AWARD

I, Ioannis Gloumis, 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.

1. Hearing(s) held on 09/23/2024
Declared closed by the arbitrator on 09/23/2024

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated virtually for the Applicant

Robert Becker, Esq. from Ginsberg, Becker & Weaver, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$468.11**, 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 No-Fault reimbursement for spinal ligament laxity analysis ("LLA") services that were performed on September 20, 2023, following a February 24, 2023 motor vehicle accident. Respondent denied the claim in dispute based upon the defense of lack of medical necessity predicated upon the peer review report by Jeffrey Beer, M.D. dated October 11, 2023.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence that has been submitted by the parties. There were no witnesses that testified during the arbitration hearing.

The EIP, then a 22-year-old female passenger, was injured in a motor vehicle accident on February 24, 2023. Following the accident, the EIP sought private medical attention for injuries to the cervical and lumbar spine. The EIP came under the care of Mikhail Strut, M.D. of Applicant. Dr. Strut performed spinal LLA services on September 20, 2023.

Applicant billed Respondent \$468.11 for the spinal LLA services that were performed on September 20, 2023. Respondent received Applicant's bill for the claim in dispute on October 2, 2023. Thus, Applicant has established its prima facie case. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc 3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004); *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

Moreover, Respondent timely denied the claim in dispute on October 17, 2023 based upon the defense of lack of medical necessity predicated upon the peer review report by Jeffrey Beer, M.D. dated October 11, 2023.

Dr. Beer stated that the standard of care in the treatment of acute musculoskeletal injuries after a motor vehicle accident based upon current evidence-based literature supports the use of plain radiographs and/or conservative modalities of treatment, such as relative rest, activity modification, therapeutic exercise, and appropriate analgesic medications. Dr. Beer opined that the treatment rendered in this case represents a deviation from standard of care; there is no necessity for routinely proceeding with excessive and digitized cervical and lumbar range of motion studies in this case; such imaging may be warranted in a case where listhesis is previously detected or if baseline radiographs revealed signs of truly suspected segmental instability, which required further assessment; and there is no evidence for the digitized and excessive range of motion testing submitted as an unspecified imaging procedure in this case and currently under review.

The evidence shows that the EIP also underwent MRIs of the cervical spine and the lumbar spine on July 12, 2023, which revealed a central disc herniation at C5/6 indenting on the anterior thecal sac and a bulging disc at the L5/S1 level without evidence of compression.

Applicant provided a 21-page report, which includes statements of medical necessity from Mikhail Strut, M.D.

"At a no-fault trial involving a defense of lack of medical necessity, an insurer has an initial burden to rebut the presumption of medical necessity which attaches to a claim form." *Parkway Hospital, Inc. v. Integon National Ins. Co.*, 64 Misc.3d 139(A) (App. Term 2d, 11th & 13th Dists. July 19, 2019). See also *Dayan v Allstate Ins. Co.*, 49 Misc 3d 151[A] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2015]).

Furthermore, the Court in *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767, 772 held the following, in relevant part:

*"...a denial premised on lack of medical necessity must be supported by evidence such as an independent medical examination, peer review, or examination under oath "setting forth a sufficiently detailed factual basis and medical rationale for the claim's rejection" (Amaze Med. Supply v Eagle Ins. Co., 2 Misc 3d 128[A], 2003 NY Slip Op 51701, *1 [App Term, 2d Dept 2003]; see also Rockaway Blvd. Med. P.C. v Travelers Prop. Cas. Corp., 2003 NY Slip Op 50842[U] [App Term, 2d & 11th Dists 2003]; see also 11 NYCRR 65-3.8 [b] [4]; Choicenet Chiropractic P.C. v Travelers Prop. Cas. Corp., 2003 NY Slip Op 50697[U] [App Term, 2d & 11th Jud Dists 2003]; Rockaway Blvd. Med. P.C. v Allstate Ins. Co., 2003 NY Slip Op 50681[U] [App Term, 2d & 11th Jud Dists 2003])..."*

Where the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the applicant provider which must then present its own evidence of medical necessity. See *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc 3d 131(A) (2006).

Following a complete review of the evidence presented, I find that Respondent's defense of lack of medical necessity should be sustained. Respondent has established its prima facie burden of lack of medical necessity for the cervical spine LLA services in dispute based upon the peer review report of Dr. Beer, who opined that the treatment rendered in this case represents a deviation from standard of care and that there is no necessity for routinely proceeding with excessive and digitized cervical and lumbar range of motion

studies in this case. The evidence shows that the EIP underwent MRIs of the cervical spine and the lumbar spine on July 12, 2023, which revealed a central disc herniation at C5/6 indenting on the anterior thecal sac and a bulging disc at the L5/S1 level without evidence of compression. I have considered the report by Dr. Strut, which noted a finding of ligamentous instability in the cervical spine, impairment changes at C5/6, and interruptions at C3/4, C4/5, and C6/7. I am not persuaded that LLA services in dispute were medically necessary. I remain persuaded by the opinion of Dr. Beer that the LLA services in dispute were not medically necessary. Consequently, Respondent's denial of the claim in dispute should be upheld.

Accordingly, Applicant's claim is hereby denied in their entirety.

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

09/26/2024
(Dated)

Ioannis Gloumis

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:
9abc818e7094a4b63a5500f95a312dd7

Electronically Signed

Your name: Ioannis Gloumis
Signed on: 09/26/2024