

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sedation Vacation Perioperative Medicine
PLLC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No.	17-24-1341-2470
Applicant's File No.	NF 3747026
Insurer's Claim File No.	697259
NAIC No.	Self-Insured

ARBITRATION AWARD

I, Fred Lutzen, 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 or "Assignor"

1. Hearing(s) held on 08/27/2024
Declared closed by the arbitrator on 08/27/2024

Vijay Gupta, Esq., from The Law Office of Thomas Tona, PC participated virtually for the Applicant

Jeffrey Kadushin, Esq., from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$831.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$267.39 in agreement with Respondent's fee calculations.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the amended amount is correct per the fee schedule.

3. Summary of Issues in Dispute

The male EIP (first initial "N") was 25-years-old when he was injured as a bicyclist involved in an accident with an automobile on 5/18/2023. He subsequently underwent a thoracic spine epidural steroid injection on 8/5/2023. Applicant seeks reimbursement for anesthesia services provided in connection with the T-ESI performed on 8/5/2023.

Respondent denied reimbursement for lack of medical necessity based on a peer review report prepared by Dr. Jeffry R. Beer, M.D., dated 1/18/2024.

The issue is whether the disputed thoracic injection under anesthesia was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided based on prevailing law, the submissions of the parties as contained in the electronic file ["MODRIA"] maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no live witnesses.

Unless the parties' agreement provides otherwise, an arbitrator need not apply the rules of evidence, is not bound by principles of substantive law, may do justice as he sees it, and may apply his own sense of law and equity to the facts as he finds them to be. Matter of New Century Acupuncture, P.C. v. Country Wide Ins. Co., 48 Misc.3d 1201(A), 18 N.Y.S.3d 580 (Table), 2015 N.Y. Slip Op. 50919(U) at 2, 2015 WL 3821534 (Dist. Ct. Suffolk Co., C. Stephen Hackeling, J., June 18, 2015); see also, *Rules for Arbitration of No-Fault Disputes in the State of New York*; Effective August 16, 2013, [p](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." <https://nysinsurance.adr.org>.

Medical Necessity

It is Respondent's initial burden to rebut the presumption of medical necessity that attaches to a proper claim submission. Respondent's denial for lack of medical necessity must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc.3d 975, 787 N.Y.S.2d 645 (Civ. Ct. New York Co. 2004); CityWide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 609, 777 N.Y.S.2d 241, 242 (Civ. Ct. Kings Co. 2004).

Defense

On 1/18/2024, Dr. Beer reviewed the relevant records, including the ER records, evaluation reports, treatment records, MRI reports for the thoracic spine, cervical spine, and lumbar spine, prescription medication and DME records, and other records/reports.

Dr. Beer opined that the injection at issue was a deviation from the standard of care and also that it would not be medically necessary to do so under anesthesia. Dr. Beer stated, in part, "ESIs are more often successful in patients without significant compression of the nerve root and, therefore, in whom an inflammatory basis for radicular pain is most likely. In such patients, a success rate of 75% renders ESI an attractive temporary alternative to surgery, but in patients with significant compression of the nerve root, the likelihood of benefiting from ESI is low (26%). This success rate may be no more than that of a placebo effect, and surgery may be a more appropriate consideration." Citing, *Predictors of a favorable response to transforaminal injection of steroids in patients with lumbar radicular pain due to disc herniation.* Pain medicine 12.6 (2011): 871-879.)

Dr. Beer also stated, "The claimant in this case described lumbar and thoracic pain following an automobile accident. The claimant's MRIs revealed broad based disc herniations without focal central or neural foraminal compromise. Given that pathology amenable to injections was not discovered, the procedure under review is not considered medically necessary."

Before addressing the need for anesthesia, I find Dr. Beer's opinion is based on an accurate factual basis, supported by medical authority, and meets Respondent's initial burden of proof that, prima facie, the thoracic ESI lacked medical necessity.

Rebuttal

Applicant did not submit a formal rebuttal report although I agree that a formal report is not always required so long as the medical records are sufficient to rebut the peer reviewer's opinion.

Applicant's counsel pointed to the evaluation records, including the procedure report. On 8/5/2023, the EIP complained of radiating neck pain and radiating low back pain. Mid-back pain was sharp, 7/10, worsened with movements and improved with resting. The EIP denied other injuries, including chest pain. Examination of the thoracic spine revealed tenderness, muscle spasm, trigger points, and mildly decreased range of motion.

The procedure report by Dr. Ayyad states this was an ESI at T9-10 but the anesthesia report states this was performed at T8-9. The procedure report states, in part, there was "a history of mid back pain radiating to the patient's anterolateral chest." This is not accurate. On 8/5/2023, the EIP did not report thoracic pain radiating to the chest, denied chest pain, but reported radiating pain from the neck and lower back.

On 7/8/2023, the EIP reported mid-back pain at 8/10 and improved with resting. There was no mention of radiating pain to the chest, the EIP denied chest pain, and examination of the thoracic spine revealed tenderness, muscle spasm, trigger points, and mildly decreased range of motion.

There were also positive clinical tests, pointed out by Applicant's counsel. However, the positive clinical tests that address nerve root conditions were related only to the cervical and lumbar spine..

Further Discussion / Analysis

I am tasked to determine which is more persuasive on the issue of medical necessity. Comparing the evidence presented by both sides, including the peer review, Applicant's rebuttal evidence, and the medical records, I find that the Respondent has submitted sufficient evidence to satisfy its burden of proof that the thoracic spine ESI was not medically necessary and was performed against the standards of care and generally accepted practice. I am persuaded by the peer reviewer's opinion and am not persuaded by the rebuttal evidence or medical records as there is no information that supports a need for a thoracic spine ESI on 8/5/2023 other than the procedure report that reports pain radiating to the chest for the first time which is contrary to earlier records.

Applicant failed to meet its shifted burden of proof.

Conclusion

Having carefully considered the submissions of the parties, the relevant case law, and the arguments of respective counsel, I conclude that the preponderance of the credible evidence supports a finding in favor of Respondent.

The denial is sustained.

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 Onondaga

I, Fred Lutzen, 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)

Fred Lutzen

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:
effa1d39bd53d4c1ee25fe4f2e5baf4d

Electronically Signed

Your name: Fred Lutzen
Signed on: 09/26/2024