

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Physical Medicine & Rehab Of NY PC
(Applicant)

- and -

Palisades Insurance Company
(Respondent)

AAA Case No. 17-24-1337-5602

Applicant's File No. n/a

Insurer's Claim File No. 801002186110-002

NAIC No. 10791

ARBITRATION AWARD

I, Teresa Girolamo, Esq., 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: M.C.

1. Hearing(s) held on 08/30/2024
Declared closed by the arbitrator on 08/30/2024

Dino DiRenzo, Esq. from Dino R. DiRienzo Esq. participated virtually for the Applicant

Larry Scienski, Esq. from Law Office of William J. Fitzula participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,368.15**, 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

Whether Applicant's bills in the amount of \$3,368.15 for dates of service of 6/27/2023 - 12/20/2023 were medically necessary as same were timely denied by Respondent based upon a PM& R Independent Medical Examination Report of Eric Roth, M.D. dated 5/30/2023?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing. This decision is based on my review of that file, as well as the arguments of the parties at the hearing. Each of the parties appeared via ZOOM.

Legal Analysis:

I find in this case that Applicant has made out its *prima facie* case Respondent has the burden to rebut the claim with proof that the health care services were not medically necessary or with some other viable defense (See *Amaze Med. Supply v. Eagle Ins. Co.* 2 Misc. 3rd 128[A] 2003).

Once the insurer makes a *prima facie* showing that the amounts charged by a provider were in excess of the fee schedule, the burden shifts to the provider to show that the charges involved a different interpretation of such schedule or an inadvertent miscalculation or error. *Cornell Medical, P.C. v. Mercury Casualty Co.*, 24 Misc.3d 58, 884 N.Y.S.2d 558 (App. Term 2d, 11th & 13th Dists. 2009).

With respect to lack of medical necessity is an affirmative defense that is the Respondent's burden to prove. See, *Alliance Medical Office, P.C. v. Allstate*, 196 Misc.2d 268, 269, 764 N.Y.S.2d 341, 342 (Civil Ct., Kings Cty. 2003); *Choicenet Chiropractic P.C. v. Allstate*, 2003 WL 1904296, 2003 N.Y. Slip Op. 50672U (App.Term 2nd Dept. 2003). "At a minimum, [Respondent] must establish a factual basis and medical rationale for the lack of medical necessity of [Applicant's] services. *Nir v. Allstate*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005). Once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, "plaintiff must rebut it or succumb", *Bedford Park Medical Practice P.C. v. American Transit Ins. Co.* 8 Misc. 3d 1025 (A) 806 N.Y.S. 2d 443 (Table),

A treatment or service is medically necessary if it is "appropriate, suitable, proper and conducive to the end sought by the professional health service in consultation with the patient. It means more than merely convenient or useful treatment or services, but treatment or services that are reasonable in light of the patient's injury, subjective and objective evidence of the patient's complaints of pain, and the goals of evaluating and treating the patient." *Fifth Avenue Pain Control Center v. Allstate*, 196 Misc. 2d 801, 807-808 (Civ. Ct. Queens Cty. 2003). Medically necessary treatment or services must be "consistent with the patient's condition, circumstances and best interest of the patient with regard to the type of treatment or services rendered, the amount of treatment or services rendered, and the duration of the treatment or services rendered." *Id.*

Facts:

In this case on 10/21/2022 M.C. was involved in an accident. Respondent has not offered a police report, an MV-104 nor an NF-2. As such, the facts of this loss are obtained from the medical documentation.

At the time of the Accident of 10/21/2022 M.C. was riding a scooter when he was struck by a bus. As a result of said accident M.C. reportedly was unconscious for 10 minutes and was transported to NY Presbyterian Hospital where he was treated. X-rays were performed. M.C. was given crutches, a neck collar, an ace bandage, hydromorphone and was not discharged until 8 days later, on 10/29/2022.

M.C. Started on a course of care due to complaints of headaches, pain in the neck, mid back, low back, left shoulder, right knee, right ankle; right foot, jaw and eye pain.

At the time of the IME with Eric Roth, M.D., non 5/30/2023, M.C. advised that he underwent right leg fasciotomy surgery on 10/22/2022 and vein surgery on 3/1/2023.

At the time of the IME M.C. complained of headaches, mid back, low back, right knee, right ankle and right foot pain.

Under the section, "General Observations", the IME Report states " ***There is a mild limp*** noted to the right side. ***The claimant is using a straight cane and is wearing a right lower leg wrap.*** The claimant has healed surgical scars to the medial and lateral leg." (Emphasis added).

For the physical examination of the cervical spine, there was no tenderness; no muscle spasm noted, and ranges of motion were normal. For motor strength of the upper extremities same was 5/5; sensory examination was normal; reflexes were 2+, there was no atrophy of the intrinsic muscles; no evidence of deformity, swelling, ecchymosis or edema. Spurling's test was negative.

The examination of the thoracic spine, the lumbosacral spine, the bilateral shoulders, the bilateral elbows; wrists; hands were also completely normal in all aspects. For the right hip; the left hip, bilateral knees; bilateral feet and ankles, the entire examination was normal.

The IME report documents a considerable amount of records provided for review.

For the diagnosis same reads as follows:

1. Status post cervical spine sprain/ strain - Resolved.
2. Status post thoracic spine sprain/ strain - Resolved.
3. Status post lumbar spine sprain/ strain - Resolved.
4. Status post left shoulder tendonitis - Resolved.
5. Status post right knee tendonitis - Resolved.
6. Status post right ankle/foot tendonitis - Resolved.
7. Status ***post compartment syndrome, right lower leg with complication.*** (Emphasis added)

For the "disability" section of the report, Dr. Roth noted:

"Mr. Cuevas ***has mild to moderate partial disability*** from a physical medicine and rehabilitation point of view. The claimant is ***able to work*** and perform all activities of daily living and work ***with restrictions to right lower leg*** that include prolonged walking and standing. There is no need for loss wages." (Emphasis added).

Eric Roth, M.D., therefore concluded:

"Based on my examination, ***no treatment is necessary from a physiatric viewpoint. There is no need for further physical therapy or follow-up.*** Further physiatric treatment is not reasonable or necessary. ***There is no need for diagnostic testing, durable medical equipment, ambulatory services, household help or special transportation. There is no need for massage therapy, prescription medication or injections. Any further treatment is out of my specialty. I defer comment on the right lower leg compartment syndrome to the appropriate specialty.***" (Emphasis added).

According to the Global Denial of Benefits and the specific denials of benefits states, "As per the findings of the physical medicine and rehabilitation medical examination by Dr. Eric Roth, MD on 5/30/2023, all physical medicine and rehabilitation treatment is terminated as of 06/16/2023."

Arbitrator's Note:

There is no explanation as to why M.C. was limping; using a cane, had a leg wrap, was partially disabled, yet there was no need for further physical therapy? No need for further massage treatment? Work was limited with restrictions? What would be the specialty for the "right lower leg compartment syndrome?"

Decision:

Having reviewed the evidence herein, I find that the IME report leaves too many questions unanswered and a claimant who is disabled yet physical therapy and similar treatment was not needed. What is telling is that the IME report states, "any further treatment is out of my specialty", this statement therefore implies in this Arbitrator's opinion, that treatment IS necessary but this IME doctor was the wrong specialty to judge what treatment. As such, I find that Respondent is unable to establish its affirmative defense of lack of medical necessity. Therefore, Applicant's claims are granted.

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
	Physical Medicine & Rehab Of NY PC	06/27/23 - 12/20/23	\$3,368.15	Awarded: \$3,368.15
Total			\$3,368.15	Awarded: \$3,368.15

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/22/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is payable from 2/22/2024 to date of payment.

C. Attorney's Fees

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

Interest is payable from 2/22/2024 to date of payment.

- 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 CT

SS :

County of Fairfield

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

09/30/2024

(Dated)

Teresa Girolamo, Esq.

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:
d93351905a9f96cc79cfdcea86d9be8

Electronically Signed

Your name: Teresa Girolamo, Esq.
Signed on: 09/30/2024