

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stanley Ikezi, MD PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-24-1336-9624

Applicant's File No. N/A

Insurer's Claim File No. 687978

NAIC No. Self-Insured

ARBITRATION AWARD

I, Amanda R. Kronin, 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: KM

1. Hearing(s) held on 07/30/2024, 09/30/2024
Declared closed by the arbitrator on 09/30/2024

Marc L. Schwartz, Esq from Buitrago & Associates, PLLC participated virtually for the Applicant

David Giersch, Esq from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$7,500.00**, 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 record reveals that the Assignor KM, a 29-year-old-male, sustained injuries in a motor vehicle accident on 10/28/22. The Applicant seeks reimbursement for the surgeon's fees in connection with a lumbar percutaneous discectomy and annuloplasty performed by Stanley Ikezi, MD on 12/20/23. The Respondent denied reimbursement based on a peer review by Jeffry R. Beer, MD dated 1/28/24. The issue is the medical necessity of the lumbar percutaneous discectomy and annuloplasty.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association as well as the testimony of Respondent's medical expert, Dr. Jeffry Beer. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties and the witness appeared, and the hearing was conducted virtually via zoom. The applicant was afforded the opportunity to testify but failed to appear.

To receive payment of a claim, Applicant "need only file a 'proof of claim' (11 NYCRR 65.11(k)(3)), and the insurers are obliged to honor it promptly or suffer the statutory penalties." Dermatossian v. New York City Transit Authority, 67 N.Y.2d 219, 224, 501 N.Y.S.2d 784, 787 (1986).

Furthermore, the No-Fault law requires a carrier to either pay or deny a claim for No-Fault benefits within thirty (30) days from the date an applicant supplies proof of claim. See, Insurance Law §5106 (a) and 11 NYCRR 65-3.8. Once Applicant establishes its prima facie case, the burden of proof shifts to Respondent to come forward with admissible evidence demonstrating the existence of a material issue of fact. Amaze Medical Supply Inc. v. Allstate Insurance Co. 3 Misc3d at 133. Herein, I find that Applicant established its prima facie case. Applicant amended the amount in dispute to \$4231.34 in accordance with respondent's coder's affidavit.

Additionally, no challenge was raised against the timeliness of Respondent's denial therefore, their medical necessity defense is preserved for consideration. Insurance Law §5106(a); 11NYCRR §65- 3.8(a) (1); 11NYCRR §65- 3.8(c), Presbyterian Hosp. v Maryland Cas. Co., 90 NY 2d 274, 660 NYS 2d 536 (1997). To deny a claim based on a lack of medical necessity the insurer must present medical evidence which sets forth with

sufficient particularity the factual basis and medical rationale underlying that determination. Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 12 Misc. 3d 133(A), 2006 NY Slip Op 51185(U) (App Term 2d Dept. 9th and 10th Jud Dist. June 8, 2006). Such evidence can take the form of a "peer review or any other proof, such as an independent medical examination, setting forth a sufficiently detailed factual basis and medical rationale for the claim's rejection, e.g. Choicenet Chiropractic P.C. v Allstate Ins. Co., NYLJ, Mar. 7, 2003 (App Term, 2d & 11th Jud Dists)" Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2003 NY Slip Op 51701(U) (NY App. Term 2003); see also Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp., 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

In support, Respondent relies on a peer review by Dr. Beer dated 1/28/24. Dr. Beer provides a history of the Assignor as a 29-year-old male who was involved in a motor vehicle accident on 10/28/22. Dr. Beer notes that following the accident, the Assignor described lumbar pain. Dr. Beer goes on to state that A systematic review found that current evidence does not support the routine use of minimally invasive surgery for lumbar discectomy. Minimally invasive surgery had no clinically significant advantage in terms of short- or long-term measures of pain or function. Patients who underwent minimally invasive disc surgery had higher levels of nerve root injury, dural tears, and reoperation. In his peer Dr. Beer goes on to say that in this case, Percutaneous discectomy (PCD) is a "blind" procedure performed under the direction of fluoroscopy. It involves placing an instrument into the center of the disc space, and either mechanically removing disc material or vaporizing it by use of a laser, to create a void so that extruded material can return to the center of the disc. Percutaneous lumbar discectomy procedures are rarely performed in the U.S., and no studies have demonstrated the procedure to be as effective as discectomy or microsurgical discectomy. Dr. Beer opined that the claimant's MRI revealed only multilevel disc bulging. Given that pathology amenable to discectomy and concordant with the claimant's symptoms was not discovered, the procedure under review is not considered medically necessary. Furthermore, percutaneous discectomy (PCD) is not recommended because proof of its effectiveness has not been demonstrated... Consequently, the percutaneous lumbar discectomy procedure is not considered medically necessary.

Applicant uploaded a rebuttal by Dr. Stanley Ikezi. In his rebuttal Dr. Ikezi notes that he disagrees with the determination by Dr. Beer that the 3/25/21 LESI and associated services were not medically necessary.

On 11/01/2023, the patient was provided with lumbar epidural steroid injection and intraoperative fluoroscopy. The pre and post-operative diagnosis was lumbar spinal stenosis and lumbar radiculopathy. Dr. Ikezi's evaluation report dated 12/20/2023 documents that the patient had complaints of lower back pain and leg pain with numbness and pins and needle sensation. The patient had muscle pain, joint pain, stiffness; limitation of motion; tenderness, backache and spasms. The diagnoses included postlaminectomy syndrome; radiculopathy, lumbosacral region. The patient was recommended continuing physical therapy 2-3 times per week for 6 weeks; home exercise regimen 30 mins daily for 6 weeks; core exercises and stretching, alternative heating pad and ice pack, TENS unit; lumbar discectomy. Dr. Ikezi asserts that the Assignor began a course of conservative treatments following the MVA to address injuries and pain sustained to the lower back. Dr. Ikezi notes that the Peer reviewer has overlooked that percutaneous disc discectomy is a minimally invasive procedure that effectively relieves pain for appropriate patients. Dr. Ikezi continues noting that his patient was suffering from continued radicular lower back pain and impairment since the accident in discussion, he underwent extensive conservative care without any trends toward significant improvements in pain. and functioning. Therefore, Dr. Ikezi opines that the lumbar percutaneous discectomy and annuloplasty was warranted at this juncture.

At the hearing in this matter, applicant's counsel argued that had Dr. Beer reviewed the MRI findings he would have been able to form a connection between its findings and the patient's symptomology. Dr. Beer's failure to review the available MRI, calls into question the validity of his clinical assessment of the patient's condition. However, Dr. Beer testified that there was no evidence of nerve compression on the MRI report. Further, Dr. Beer testified that the claimant's MRI revealed only multilevel disc bulging. Dr. Beer went on to restate his peer review position testifying that there was no medical necessity for the lumbar percutaneous discectomy and annuloplasty because there was no clear pathology to support the use of the procedure.

With respect to the rebuttal by Dr. Ikezi, Dr. Beer noted his disagreement and again restated his position that the pathology discussed does not exist to warrant the injection. There was no evidence of nerve compression. On cross examination, Dr. Beer testified that that the assignor suffers from bulging discs not herniated discs and should have continued with conservative treatment as opposed to undergoing a discectomy. I find his analysis thorough and persuasive.

After a review of the documents contained in the ECF and in consideration of Dr. Beer's testimony and the arguments made by the parties at the hearing, I find for Respondent. The applicant's claim is denied. This decision is based upon my review of the submitted evidence, along with the oral arguments of the representatives present at the hearing; only the arguments offered at the hearing are preserved in this decision. Any arguments not presented at the hearing are considered waived. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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 Suffolk

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

10/04/2024
(Dated)

Amanda R. Kronin

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:
aed5d05a346a92e5e272a7076683db2c

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 10/04/2024