

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sky Radiology, PC.
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-23-1330-3410

Applicant's File No. FDNY23-71640

Insurer's Claim File No. 0539452100002

NAIC No. 36447

ARBITRATION AWARD

I, Stacey Erdheim, 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: Claimant

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

Todd Fass from Fass & D'Agostino, P.C. participated virtually for the Applicant

Tymesha Smith from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,861.50**, was AMENDED and permitted by the arbitrator at the oral hearing.

This arbitration arises out of treatment of a Claimant (MK) for injuries sustained in a motor vehicle accident occurring on 6/25/23. Applicant seeks reimbursement for an MRI of the brain, left shoulder, left wrist and right knee performed on 7/13/23-7/20/23 in the amended amount of \$3379.40. Both sides agree that this is the proper fee schedule. Respondent timely denied the bill based upon a Peer Review by Stuart Springer MD dated 8/25/23.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

This arbitration arises out of treatment of a Claimant (MK) for injuries sustained in a motor vehicle accident occurring on 6/25/23. Applicant seeks reimbursement for an MRI of the brain, left shoulder, left wrist and right knee performed on 7/13/23-7/20/23 in the amended amount of \$3379.40. Both sides agree that this is the proper fee schedule. Respondent timely denied the bill based upon a Peer Review by Stuart Springer MD dated 8/25/23.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the Hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing.

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. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of a Claimant (MK) for injuries sustained in a motor vehicle accident occurring on 6/25/23. Applicant seeks reimbursement for an MRI of the brain, left shoulder, left wrist and right knee performed on 7/13/23-7/20/23 in the amended amount of \$3379.40. Both sides agree that this is the proper fee schedule. Respondent timely denied the bill based upon a Peer Review by Stuart Springer MD dated 8/25/23.

It is Applicant's *prima facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see *Insurance Law* § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Applicant has met its Prima Facie burden in the case at hand.

The record reveals that Claimant was injured in a motor vehicle accident on 6/25/23. Claimant was seen on 6/26/2023 by Stanley-Sangwook Kim, D.O., with complaints of bilateral headaches, left shoulder pain associated with swelling, left wrist pain associated with swelling, and right knee pain. Pain rated at 8-9 out of 10. The pain was aggravated by prolonged sitting and standing. Examination of the left shoulder revealed a decreased range of motion in all planes; positive Apprehension test. Examination of the left wrist revealed a decreased range of motion. Examination of the right knee revealed a decreased and painful range of motion; positive Anterior/Posterior Drawer test. The patient was diagnosed with right knee sprain/strain, unspecified sprain left shoulder,

wrist sprain unspecified, and left shoulder sprain/strain. The patient was recommended for MRIs of the left shoulder, left wrist, and right knee, prescribed medication, physical therapy as well a follow-up evaluation.

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452; *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

In the event an insurer relies on a peer review report to demonstrate that a particular service was medically unnecessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory and should be supported by evidence of generally accepted medical/professional practice or standards. *James M. Ligouri Physician, PC v. State Farm Mut. Auto Ins. Co.*, 2007 N.Y. Slip Op 50465 (U) (N.Y. Dist. Ct. 2007); *Jacob Nir v. Allstate Insurance Company*, 2005 NY Slip Op 25090; 7 Misc.3d 544; 796 N.Y.S.2d 857; 2005 N.Y. Misc. LEXIS 419 and *Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc. 3d 608; 777 N.Y.S.2d 241; 2004 NY Slip Op 24034.

In the event that an insurer's evidence rebuts the inference of medical necessity, by proof in admissible form, establishing that the services are not medically necessary and if such proof is not refuted by applicant such proof may entitle the insurer to a judgment in its favor. *Alfa Medical Supplies v. Geico General Ins. Co.*, 36 Misc.3d 156(A), 2012 N.Y. Slip Op. 51765(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2012); *Delta Diagnostic Radiology, PC v. American Transit Insurance Co.*, 18 Misc.3d 128(A), 2007 N.Y. Slip Op. 52455(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007); *A. Khodadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007).

Respondent timely denied the bill in dispute based upon a peer review by Stuart Springer MD dated 8/25/23. Dr. Springer reviewed all the medical evidence and concluded that the MRI was not medically necessary.

The standard of care for brain MRI states that it can help doctors look for conditions such as bleeding, swelling, problems with the way the brain developed, tumors, infections, inflammation, damage from an injury or a stroke, or problems with the blood vessels. The MRI also can help doctors look for causes of headaches or seizures. The standard of care for MRI studies after a motor vehicle accident would begin with a reasonable trial of conservative treatment. If the claimant did not respond to the therapy and had clinical evidence of a progressive neurological or orthopedic deficit, MRI might be indicated. Advanced diagnostic imaging should be reserved for claimants who have not shown significant improvement over the course of four (4) to six (6) weeks of conservative therapy... In this case, the claimant was involved in the MVA on 6/25/2023 and sustained injuries to the left shoulder, left wrist, and right knee. The MRI

of the left shoulder was performed on 7/10/2023 and MRIs of the left wrist, and right knee were performed on 7/17/2023. The standard of care states that advanced diagnostic imaging should be reserved for claimants who have not shown significant improvement over the course of four (4) to six (6) weeks of conservative therapy. Also, as per the above-cited article, MRI is not indicated immediately because the clinical picture may be worse than the actual pathology, and the patient may improve with four to six weeks of conservative care. As per the available medical records, the claimant did not receive conservative care for the left shoulder, left wrist, and right knee, in any form. The claimant's complaints should have been addressed initially with adequate and consistent conservative care in the form of physical therapy, acupuncture treatment, and a home exercise program for 4-6 weeks before proceeding to the MRIs. Hence, based on the above article and available medical records, the MRIs of the left shoulder, left wrist, and right knee performed were not medically necessary. In regards to the causality for left shoulder, left wrist, and right knee, the following should be noted: The claimant is a 55-year-old female, who was involved in a motor vehicle accident on 6/25/2023, as a rear-seat passenger of a vehicle. The claimant's vehicle was struck from the left side. There was no loss of consciousness. She sustained injuries to the left shoulder, left wrist, and right knee. There was no documented evidence of past medical or surgical history. In addition, the documentation does not substantiate the presence of a pre-existing condition. Hence, based on the available medical records, there was a causal relationship between the claimant's complaints related to the left shoulder, left wrist, and right knee and the MVA dated 6/25/2023.

Once the peer review sets forth a reasonable factual basis and medical rationale for the opinion regarding the medical necessity for the treatment in dispute, the trier-of-fact will look to the Applicant to rebut the evidence and conclusion reached by the peer reviewer. In the absence of such a rebuttal, the denial of the claim can be sustained. A. Khodadadi

Radiology, P.C. v. N.Y. Centr. Mut. Fire Ins. Co., 16 Misc.3d 131[A], 2007 NYS Slip Op

51342[U] [App. Term 2d & 11th Jud Dsts 2007]

Applicant argues that the Peer Reviewer has not met Respondent's burden in showing that performing the surgery deviated from generally accepted medical standards. To meet its burden of proving disputed services were not medically necessary, Respondent's expert must demonstrate the disputed treatment was inconsistent with generally accepted professional practice. Generally accepted practice is the range of practice that the profession will follow in the diagnosis and treatment of the patient in light of the standards and values that define it. City Wide Social Work & Psychological Services, P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d 608 (Civ Ct Kings Co 2004).

Applicant has a rebuttal from Clifton Burke, M.D. Dr. Burke reiterates the findings of the examination and argues that

Here, as per the evaluation report dated 06/26/2023, the patient presented to Stanley [1] Sangwook Kim, D.O., with complaints of bilateral headaches, and pain rated at 8-9 out

of 10. Thus, the patient was recommended for MRIs so as to evaluate the injuries. Therefore, this patient's findings fell within the aforementioned guidelines warranting an MRI where there is no required time frame for performing the MRI on suspected discogenic injuries and earlier than after a course of care deemed required by the peer reviewer... Here, as per the evaluation report dated 06/26/2023, the patient presented to Stanley [1]Sangwook Kim, D.O., with complaints of left shoulder pain associated with swelling. Pain rated at 8-9 out of 10. Examination of the left shoulder revealed a decreased range of motion in all planes; positive Apprehension test. The patient was diagnosed with unspecified sprain left shoulder and left shoulder sprain/strain. Therefore, the patient was recommended MRI to evaluate the traumatic injuries and to diagnose the cause of pain. Therefore, the recommended MRI was medically necessary... Here, as per the evaluation report dated 06/26/2023, the patient presented to Stanley [1]Sangwook Kim, D.O., with complaints of left wrist pain associated with swelling. Pain rated at 8- 9 out of 10. Examination of the left wrist revealed a decreased range of motion. The patient was diagnosed with a wrist sprain. The peer reviewer neglected to recognize the findings of traumatic joint injuries indicated by left wrist pain, pain on palpation, decreased range of motion, in this case, which warranted the MRI testings. Thus, this patient's findings fell within the aforementioned guidelines warranting an MRI where there is no waiting period required and earlier than after a course of care deemed required by the peer reviewer and therefore met the standard of care for this MRI... As per the evaluation report dated 06/26/2023, the patient presented to Stanley-Sangwook Kim, D.O., with complaints of right knee pain. Pain rated at 8-9 out of 10. The pain was aggravated by prolonged sitting and standing. Examination of the right knee revealed a decreased and painful range of motion; positive Anterior/Posterior Drawer test. The patient was diagnosed with a right knee sprain/strain. Therefore, the patient was recommended MRI to evaluate the traumatic injuries and to diagnose the cause of pain, tenderness, and decreased range of motion as well as a positive orthopedic test. Therefore, the recommended MRI of the right knee was medically necessary. In conclusion, I find the MRIs of the Brain and Left shoulder dated 07/10/2023 as well as the MRI of the Left Wrist and Right knee dated 07/17/2023 were medically necessary and followed the generally accepted standards of medical practice.

After reviewing all the evidence including the rebuttal and the addendum, I find that Applicant has sufficiently refuted the Peer Review. I am persuaded by the treating physician's determination to perform the MRI. Claimants examination findings as well as the subjective complaints warranted the immediate MRI. I do not find that a Claimant must wait in order to obtain an MRI of the extremities if the subjective and objective findings reveal positive findings. I find that Applicant did not deviate from generally accepted medical standards.

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Applicant.

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	Amount Amended	Status
	Sky Radiology, PC.	07/10/23 - 07/17/23	\$3,861.50	\$3,379.40	Awarded: \$3,379.40
Total			\$3,861.50		Awarded: \$3,379.40

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5, 2002, interest shall be paid, at the rate of 2% per month, simple, from the arbitration filing date and ending with the date of payment of the award

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6

- 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 NY

SS :

County of Suffolk

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

10/07/2024

(Dated)

Stacey Erdheim

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:
b184a2c19b522b5d0b4017c3cecd48f9

Electronically Signed

Your name: Stacey Erdheim
Signed on: 10/07/2024