

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Bronx PC
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-24-1345-4547

Applicant's File No. ToalaE

Insurer's Claim File No. 238005621-008

NAIC No. Self-Insured

ARBITRATION AWARD

I, Kevin R. Glynn, 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: Assignor

1. Hearing(s) held on 09/06/2024
Declared closed by the arbitrator on 09/06/2024

Michael Tomforde, Esq. from Dash Law Firm, PC participated virtually for the Applicant

Michele Rita, Esq. from Hollander Legal Group PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,533.74**, 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 Assignor, ET, is a 20yo female passenger who was injured in a motor vehicle accident on 2/14/23. In dispute are Applicant's claims for MRIs of the lumbar spine, cervical spine and thoracic spine performed on 3/6/23 in the total amount of \$2,533.74. Respondent denied the claims based on the peer review report by Dr. Ayman Hadhoud, M.D., dated 5/11/23. Therefore, there is an issue regarding the medical necessity of the claims and, if necessary, the proper amount of reimbursement.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

I find that Applicant established a prima facie case of entitlement to reimbursement for its claim. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's evidence established that the bills were timely denied pursuant to the peer review report by Dr. Ayman Hadhoud, M.D., dated 5/11/23. Dr. Hadhoud opined that the MRIs were not medically necessary because they were ordered prematurely. He noted that Dr. Almentero initially evaluated the patient on 2/21/23, when he recommended the initiation of physical therapy treatment and ordered these MRI studies. He noted further that at this time of referral the Assignor had not tried any course of conservative treatment, non-steroidal anti-inflammatory medications, and exercise programs. He opined that at such an early stage, management of the claimant's condition, in this clinical context, should be basically conservative in nature regardless of the MRI findings and that surgical referral would not be a treatment option, during acute phase of trauma. He opined further that there was not enough time allowed for the acute symptoms to subside or for the effect of the proposed conservative treatment to take place in controlling the claimant's symptoms before ordering this study. He opined that the neurological examination was essentially normal; sensation was intact and deep tendon reflexes were bilaterally symmetrical; and that there was no documentation of any abnormal nerve root provocative test such as Spurling test or SLR. He opined that the documented muscle weakness was an isolated finding that cannot stand by itself to justify the need for this study especially that the main components of the objective neurological examination were normal. He opined further that there were no "red-flags" to justify the premature ordering of these studies. He opined that there was no presentation of a differential diagnosis warranting the order of these studies and that there was no documentation that the ordering physician was planning on using the results to pursue more aggressive treatment. Respondent has presented a medical rationale and factual basis to support its defense of lack of medical necessity. See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2, 11 and 13 Jud. Dists. 2014). Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. 2006 NY Slip Op 52116 (App Term 1st Dept. 2006).

Applicant relies on the rebuttal report by Dr. Didier Demesmin, M.D., dated 7/1/24. Dr. Demesmin failed to meaningfully rebut the opinion of Dr. Hadhoud. See generally, Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009]. I find Dr. Hadhoud's report more persuasive and that these MRIs performed just two weeks after the initial examination and before the completion of any course of treatment (as prescribed by the referring doctor) were not medically necessary. Applicant has failed to establish by a preponderance of evidence the medical necessity of the claim. Applicant's claim is denied.

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, Kevin R. Glynn, 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)

Kevin R. Glynn

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:
86ce2a682343f2308a91e6c7d0d9dbbb

Electronically Signed

Your name: Kevin R. Glynn
Signed on: 10/07/2024