American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Surgery Center, LLC (Applicant)	AAA Case No.	17-24-1347-9819
	Applicant's File No.	24-003742
- and -	Insurer's Claim File No.	20236064520
	NAIC No.	14834
New York Central Mutual Fire Insurance Company (Respondent)		

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: LP

1. Hearing(s) held on 10/09/2024
   Declared closed by the arbitrator on 10/09/2024

   Robert Bott, Esq from The Licatesi Law Group, LLP participated virtually for the Applicant

   Cristina Carolla, Esq from Gullo & Associates, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$17,916.05**, was AMENDED and permitted by the arbitrator at the oral hearing.

   At the hearing in this matter, applicant amended the amount in dispute to $5292.93 in accordance with respondent's coder's report.

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

3. Summary of Issues in Dispute

   The Assignor LP, a 66 year old male, was injured as the driver of a motor vehicle involved in an accident on 3/05/23. Following the accident Assignor

suffered injuries which resulted in the Assignor seeking treatment. Thereafter, on 02/16/24, he underwent a lumbar discectomy with IDET with fluoroscopy and probe both performed by the Applicant. Reimbursement for the procedures was denied predicated on a peer review by Christopher Burrei, DO dated 3/20/24. The issues to be determined are the medical necessity of the aforementioned surgery.

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4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

The case was decided on 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 the electronic file for both parties and make my decision in reliance thereon.

In support of its position, Applicant submitted claims in the amount of $ 5292.93 for the surgery center's fees related to the treatment referenced above.

In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. Respondent bears the burden of production in support of it lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). However, there are myriad civil court decisions tackling the issue of

what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity. The civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion.

The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

The EIP underwent a cervical discectomy, respondent relies upon a peer review by Christopher Burrei, DO dated 3/20/24. Dr. Burrei reviewed a number of medical records to support his findings. Dr. Burrei opined: there is certainly no indication to perform transforaminal bilateral multilevel epidural injections at the time of a surgical procedure. I would also note an epidurogram is useful if there is a differential diagnosis or diagnostic dilemma prior to surgical consideration. However, in this instance, there is no indication to perform an epidurogram, and certainly if a lumbar epidural injection was performed, the use of dye for guidance is included within the injection fee. He further opined that the lumbar discectomy was not medically necessary. The claimant was not rendered any diagnosis related to lumbar radiculopathy or spinal stenosis. This evaluation is entirely inconsistent with any indication for the services under review and establishes this claimant as inappropriate for these services. I find his analysis thorough and persuasive. As such, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. Bronx Expert, 2006 NY Slip Op 52116. Applicant has submitted medical records and a rebuttal from Dr. Didier Demesmin in response to the peer review report of Dr. Burrei.

Applicant's rebuttal by the surgeon Dr. Demesmin asserts that Dr. Burrei did not offer clear clinical rationale that disproves the effectiveness of the discectomy at issue. Dr. Demesmin cites medical authority and studies which support the use of discectomy with IDET with fluoroscopy and probe to improve back pain, and discusses the specifics of the EIP's condition to establish that it fits within the standard of care. Dr. Demesmin maintains that the EIP treated conservatively for almost one year without relief. Comparing the relevant evidence presented by both parties against each other, I am persuaded by Applicant's rebuttal and medical documentation and defer to the Assignor's treating physician. The peer review did not set forth the standard of care with adequate supporting medical authority in order to establish lack of medical necessity. In addition, the peer review itself cites authority regarding the efficacy of the subject surgery, which the rebuttal and medical records show was within the standard of care. I note that Dr. Burrei submitted an Addendum. However, the addendum submitted by Respondent does not present any additional medical rationales to revert the burden back to Applicant. As such, I find that Applicant has rebutted Respondent's defense and sustained its burden of proof regarding the medical necessity of the treatment at issue.

Reimbursement in the total amount of $5292.93 is due and owing herein. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing. 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 applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Amount Amended**	**Status**
	CitiMed Surgery Center, LLC	**02/16/24 - 02/16/24**	**$17,916.05**	**$5,292.93**	**Awarded: $5,292.93**
Total			**$17,916.05**		**Awarded: $5,292.93**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/15/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). For claims that fall under the Sixth Amendment to the regulation

the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first- party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 11 NYCRR 65-4.6(d)

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, 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.

10/10/2024
(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:
1a59a6358e802a7678f862f8c1e94ef0

Electronically Signed

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