

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

S & M Pharmacy
(Applicant)

- and -

Travelers Personal Insurance Company
(Respondent)

AAA Case No. 17-24-1336-1143

Applicant's File No. 394022

Insurer's Claim File No. 272 PP
IWD1262 003

NAIC No. 38130

ARBITRATION AWARD

I, Eileen Casey, 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: EIP

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

Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

John Gleavy, Esq. from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$782.78**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

It was stipulated that Applicant established a prima facie case and Respondent issued a timely denial.

3. Summary of Issues in Dispute

The EIP (SR), a 29-year-old-female, was a passenger in a motor vehicle involved in an accident on October 4, 2022. The amount claimed is \$782.78 for Celecoxib capsules, Ondansetron tablets, and Hydrocodone/APAP tablets provided on January 8, 2024.

Respondent denied Applicant's claim based on the October 5, 2023 anesthesiology/pain management IME of Sammy Dean, M.D. The issue is whether Respondent established a defense of lack of medical necessity based on the IME.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon oral arguments and a review of the documents contained in the ADR Center maintained by the American Arbitration Association. The amount claimed is \$782.78 for Celecoxib capsules, Ondanetron tablets, and Hydrocodone/APAP tablets provided on January 8, 2024.

The evidence demonstrates that the EIP (SR), a 29-year-old-female, was a passenger in a motor vehicle involved in an accident on October 4, 2022.

The IME (Lack of Medical Necessity) Defense

Lack of medical necessity is a defense to an action to recover no-fault benefits, which an insurer may assert upon a timely denial, based either on a medical examination or a peer review report. *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).

Respondent denied Applicant's claim based on the October 5, 2023 anesthesiology/pain management independent medical examination (IME) of Sammy Dean, M.D.

In his report, Dr. Dean listed the records he reviewed and detailed the EIP's relevant medical history. Dr. Dean noted that examination focused on the cervical, thoracic, and lumbar spine. Examination tenderness in the cervical spine but no other positive findings. Neurological examination revealed no sensory, muscle strength or reflex deficits. Orthopedic testing was negative. Dr. Dean's diagnosis was resolved cervical, thoracic, and lumbar spine sprain/strain. Dr. Dean stated that although the EIP had subjective complaints of pain at the time of today's examination there were no objective findings which would warrant the need for further anesthesiology/pain management treatment. He concluded that further anesthesiology/pain management treatment, including prescription medication, to the cervical, thoracic, and lumbar spine was not medically necessary.

When Respondent has timely raised and established lack medical necessity, the burden of proof then shifts to the Applicant to establish that the disputed services were reasonable and medically necessary. If the insurer medical examination or peer review is not rebutted, the insurer is entitled to denial of the claim. *A Khodadadi Radiology v. New York Central*, 16 Misc.3d 131(A) 841 N.Y.S.2d 824, 2007 N.Y. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. 2007).

Applicant's Evidence

Applicant submitted the prescriptions for the medications in dispute.

Findings

Based on the foregoing, I find that Dr. Dean's IME report was sufficient to establish that further anesthesiology/pain management treatment, including prescription medication, was not medically necessary and to shift the burden to the Applicant to establish medical necessity. There were no evaluation reports submitted that were close in time to the IME and I find that Applicant's evidence failed to rebut the IME or to establish the medical necessity for the prescription medications in dispute. Accordingly, Applicant's claim is denied in its entirety.

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 Queens

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

10/26/2024

(Dated)

Eileen Casey

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:
5da42ef24f364eb2952f9cb082a4462b

Electronically Signed

Your name: Eileen Casey
Signed on: 10/26/2024