

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Total Anesthesia Provider, P.C. f/k/a
Advanced Anesthesiology of NY, PC
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-24-1332-3503

Applicant's File No. BT23-260201

Insurer's Claim File No. 678608

NAIC No. Self-Insured

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 01/27/2025
Declared closed by the arbitrator on 01/27/2025

Heather Landeros from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Jeff Kadushin from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,234.45**, 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

This arbitration arises out of treatment of a Claimant (HFP) for injuries sustained in a motor vehicle accident occurring on 6/17/22. Applicant seeks reimbursement for anesthesia provided 8/3/22 in the amount of \$1234.45. Respondent issued a timely denial denying reimbursement based on an Independent Medical Examination conducted by Thomas Lione DO dated 12/20/22.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder 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 (HFP) for injuries sustained in a motor vehicle accident occurring on 6/17/22. Applicant seeks reimbursement for anesthesia provided 8/3/22 in the amount of \$1234.45. Respondent issued a timely denial denying reimbursement based on an Independent Medical Examination conducted by Thomas Lione DO dated 12/20/22.

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]). Herein, applicant established its *prima facie* entitlement to first party no-fault benefits by proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits was overdue.

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 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 issued a timely denial denying reimbursement based on an Independent Medical Examination conducted by Thomas Lione DO dated 12/20/22. He states: The primary difficulty with establishing necessity in this case rests in the fact

that MRI the lumbar spine is not revealing of more overt spinal canal or neural foraminal stenosis. There is no description of focal nerve root compression. As a result, there does not appear to be an indication or necessity for the lumbar epidural injection under review in this case and the performance of such a procedure represents a deviation from the standard of care. In this case, the MRI performed did not reveal evidence of a disc herniation with nerve root compression, rather imaging revealed benign disc bulges.

Dr. Lione maintains that as the MRI did not reveal focal nerve root compression, the Assignor is not a candidate for epidural injections. Regarding the trigger point injections, Dr. Lione contends medical necessity cannot be established for a concurrent multilevel trigger point injection procedure. He notes that by offering concurrent injections, the patient's response to either approach cannot be accurately assessed. Dr. Lione further states there was no necessity for the use of anesthesia in the performance of a routine spinal injection procedure, as depicted in this case, stating it can safely be

performed with local anesthetic alone. ng revealed benign disc bulges.

Dr. Lione maintains that as the MRI did not reveal focal nerve root compression, the Assignor is not a candidate for epidural injections. Regarding the trigger point injections, Dr. Lione contends medical necessity cannot be established for a concurrent multilevel trigger point injection procedure. He notes that by offering concurrent injections, the patient's response to either approach cannot be accurately assessed. Dr. Lione further states there was no necessity for the use of anesthesia in the performance of a routine spinal injection procedure, as depicted in this case, stating it can safely be performed with local anesthetic alone.

Applicant relies on medical reports as well as a rebuttal. Respondent asks that the rebuttal be precluded as Applicant first submitted this into evidence on 12/9/24. He requests that the Rebuttal be precluded as late since it was submitted 10 months after Respondent's submissions were due. I agree with Respondent and the Rebuttal will be precluded. Applicant chose what evidence to submit when filing the case for arbitration.

11 NYCRR 65-4.2(b)(3)(iii) provides,:

"The written record shall be closed upon receipt of the respondent's submission or the

expiration of the period for receipt of the respondent's submission. Documents submitted by

either party after the record is closed shall be marked "Late".

11 NYCRR 65-4.2(b)(3)(iv) provides,:

"Any additional written submissions may be made only at the request or with the approval of

the arbitrator."

I find in accordance with the Regulations cited above that the Rebuttal was untimely submitted by Applicant will not be accepted into evidence. As such, this award is based on the arguments made at the hearing as well as a review of all of the other documents submitted into evidence.

After reviewing the entire record, I am persuaded by Respondent's Peer Review that the services were not medically necessary. While Applicant notes the positive MRI reports, these findings, along with the medical records, fail to sufficiently refute the contentions raised in the peer review.

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 Respondent.

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, 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.

01/30/2025
(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:
965bf6d60c992c3827a80383f242d342

Electronically Signed

Your name: Stacey Erdheim
Signed on: 01/30/2025