American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Care Physical Therapy PC (Applicant)	AAA Case No.	17-23-1312-5681
	Applicant's File No.	OS-68671
- and -	Insurer's Claim File No.	9V1NV12004
	NAIC No.	29742
Integon National Insurance Company (Respondent)		

ARBITRATION AWARD

I, Anne Malone, 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 04/07/2025
   Declared closed by the arbitrator on 04/07/2025

   Olga Sklyut, Esq. from Law Office of Olga Sklyut P.C. participated virtually for the Applicant

   Maureen Knodel, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,349.40**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended by the applicant to $2,831.40 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

   The 54 year old EIP reported involvement in a motor vehicle accident on December 8, 2022; claimed related injury and underwent physical therapy evaluation and treatment provided by the applicant from December 20, 2022 to April 18, 2023.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on the IMEs of the EIP by Howard Kiernan, M.D. which was performed on June 6, 2022 with an IME cut-off on June 17, 2022 (for services rendered from December 20, 2022 to April 18, 2023) and Getahun Kifle, M.D. (for services rendered from January 4, 2023 to March 22, 2023) which was performed on June 26, 2022 with an IME cut-off on July 8, 2022.

The issue to be determined at the hearing is whether the respondent established that the medical services provided by the applicant were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

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/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the services provided to the EIP were not medically necessary, the respondent relied upon the report of the independent

medical examinations of the EIP by Dr. Kiernan (orthopedic) and Dr. Kifle (PM &R) both of which documented some limitations of range of motion, in various areas, measured with the assistance of a goniometer.

Based upon the physical examinations and medical records reviewed, Drs. Kiernan and Kifle determined that despite his subjective complaints, the EIP was not disabled and that he could perform his activities of daily living and working without restrictions or limitations. It was their opinions that there was no medical necessity for further orthopedic treatment, PM&R/pain management, physical therapy, surgery, injections, prescription medication, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the services provided by the applicant were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

In response to the report of the physical examinations of the EIP by Drs. Kiernan and Kifle ,the applicant relied upon the submissions, including medical records from December 20, 2022 to April 18, 2023. The last re-evaluation of the EIP was performed on March 27, 2023 which documented left ankle surgery on December 8, 2021 with complaints of stiffness and a slow gait and indication of negative range of motion without any specific details. The submissions also contained physical therapy progress notes from April 4, 2023 and April 18, 2023.

Based on the foregoing, the applicant failed to document sufficient contemporaneous objective findings that would warrant continued treatment after the IME cut-off date and has not met the burden of persuasion in rebuttal. The medical records submitted do not meaningfully address the arguments that are raised in the IME report and are insufficient to overcome the burden of production established by respondent.

Therefore, the respondent has established that the services at issue were not medically necessary.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this 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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of CT
SS :
County of Fairfield

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

04/15/2025
(Dated)

Anne Malone

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:
db7eb8ed48ced0c5ccfc712fb354cf49

Electronically Signed

Your name: Anne Malone
Signed on: 04/15/2025