

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CitiMed Complete Medical Care PC
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No. 17-24-1370-5885

Applicant's File No. RB-203-498579

Insurer's Claim File No. 9XINY07524

NAIC No. 29742

ARBITRATION AWARD

I, Alison Berdnik, 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 09/10/2025
Declared closed by the arbitrator on 09/10/2025

Alex Samaroo, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

John Rossillo, Esq. from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,185.29**, was AMENDED and permitted by the arbitrator at the oral hearing.

As a preliminary matter, Applicant amended the amount in dispute to \$3,980.03 to bring the charges into compliance with the governing fee schedule.

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

3. Summary of Issues in Dispute

The Claimant, JA, a 25-year-old female, was the operator of a motor vehicle involved in an accident on July 10, 2023. At issue in this proceeding is \$3,980.03, as amended, for MRIs of the brain, cervical, thoracic, and lumbar spine, and right shoulder performed August 2, 2023. Respondent timely denied the claims on the grounds that the services

were medically unnecessary and offers peer review reports by Eric Roth, MD dated October 27, 2023 and Dorothy Scarpinato, MD dated October 29, 2023 in support of its defense.

The issue presented for determination is whether the disputed services were medically necessary.

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 present to testify at the hearing. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

An Applicant establishes its *prima facie* showing of an entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the Respondent and that payment of no-fault benefits is overdue. *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.2d 742, 774 N.Y.S.2d 564 (2nd Dept. 2005). A facially valid claim has been defined as one that sets forth the name of the patient, date of accident, date of service, description of services rendered and the charges for those services. *See, Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company*, 186 Misc.2d 128(A), 784 N.Y.S.2d 918 (2003).

At issue in this proceeding is \$3,980.03, as amended, for MRIs of the brain, cervical, thoracic, and lumbar spine, and right shoulder performed August 2, 2023. Respondent timely denied the claims on the grounds that the services were medically unnecessary and offers peer review reports by Eric Roth, MD dated October 27, 2023 and Dorothy Scarpinato, MD dated October 29, 2023 in support of its defense.

The submission of Respondent's Denial of Claim Form ("NF-10") establishes that Respondent received Applicant's claim, and that Respondent has not paid the claim. *Lopes v. Liberty Mutual Ins. Co.*, 24 Misc.3d 127(A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2nd, 11th & 13th Dists. Jan. 26, 2009). Thus, the submission of Respondent's NF-10s in this proceeding is sufficient to satisfy Applicant's burden in this instance.

As such, the burden now shifts to the Respondent to prove that the services were not medically necessary. *Amaze Medical Supply v. Eagle Insurance*, 2 Misc.3d 128(A) (2003). Once the Respondent makes a sufficient showing to carry its burden of coming forth with evidence of lack of medical necessity, the Applicant must rebut it. *A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Insurance*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (2007).

It is well-settled that 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). 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 & 11th Jud. Dists. 2003].)

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, Nir v. Allstate Ins. Co.*, 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); *see also, All Boro Psychological Servs. P.C. v. GEICO*, 2012 N.Y. Slip Op. 50137(U) (Civ. Ct. Kings Co. 2012).

In order to prevail, respondent's peer review must address all of the pertinent objective findings contained in applicant's medical evidence. It must then clearly explain why, notwithstanding those findings, the disputed service was inconsistent with generally accepted medical or professional practices. *Amaze Medical Supply Inc. v. Eagle Insurance Co.*, *supra*, 2 Misc.3d 128(A); *Citywide Social Work, et al, v. Travelers Indemnity Company*, 3 Misc.3d 608, 777 N.Y.S.2d 241 (Civ. Ct. Kings Co. 2004). Where other reports in the insurer's papers contradict the conclusion of its peer review, or that the service was not medically necessary, it has failed to make out a *prima facie* case in support of the defense of lack of medical necessity. *Hillcrest Radiology Associates v. State Farm Mutual Automobile Insurance Company*, 28 Misc.3d 138(A), 200 N.Y. Slip Op. 51467(U) 2010 WL 3258144 (App Term 2nd, 11th, and 13th Dists. 2010).

Peer Review Eric Roth, MD

Respondent offers a peer review report by Dr. Roth dated October 27, 2023 in support of its denial of Applicant's claim for the MRIs of the brain and cervical and lumbar spine. Dr. Roth considered various records in connection with his peer review. He notes the Claimant's involvement in the underlying accident on July 10, 2023. On July 25, 2023, the Claimant was evaluated by Laura Robinson, PA for complaints of headaches, together with pain in the neck, back, and right shoulder. Following examination, the impression was of strain/sprain injuries. Physical therapy and medications were ordered, together with MRIs of the brain, cervical spine, thoracic spine, lumbar spine, and right shoulder. Dr. Roth notes that Ms. Robinson reevaluated the Claimant on September 5,

2023, following which the impression was of strain/sprain injuries. The Claimant was recommended to continue physical therapy and the current pain medications. Upon completion of his review of the records, Dr. Roth concluded that the MRIs of the brain and cervical and thoracic spine were medically unnecessary.

With respect to the MRI of the brain, Dr. Roth notes that he MRI was ordered to rule out subdural hematoma, which, according to Dr. Roth, would have already become apparent three weeks following the accident. None of the records identify any clinical signs suggestive of an intracranial bleed. There is no indication of a loss of consciousness following the accident.

With respect to the MRIs of the cervical and thoracic spine, Dr. Roth maintains there the MRIs were not clinically indicated. Citing medical literature, Dr. Roth states that it is a deviation from the standard of care to order advanced imaging studies at the initial evaluation before conservative care has been rendered and without a significant clinical indication. He further notes that MRI is recommended to rule out red flags in patients with serious or progressive neurological deficits and when referring patients for procedural interventions, such as surgery, which was not the case here.

Peer Review Dorothy Scarpinato, MD

Respondent offers a peer review report by Dr. Scarpinato dated October 29, 2023 in support of its denial of Applicant's claim for the MRIs of the lumbar spine and right shoulder. Dr. Scarpinato notes the Claimant's involvement in the underlying accident on July 10, 2023 and that on July 25, 2023, she was evaluated by "Dr. Levinson" for complaints of pain in the neck, back, and right shoulder. Following examination, the Claimant was referred for physical therapy, orthopedic consultation, pain management, and advanced diagnostic imaging. Upon completion of her review of the records, Dr. Scarpinato concluded that the MRIs of the lumbar spine and right shoulder were medically unnecessary. Citing medical literature, Dr. Scarpinato maintains that MRIs are generally not needed until at least a few months of rehabilitation are unsuccessful and only if surgery is being considered. According to Dr. Scarpinato, the Claimant's medical records did not document any severe or worsening neurological deficits sufficient to warrant an MRI of the lumbar spine. She further notes that patients with shoulder pain have common pathology that can be evaluated and treated effectively based solely on a careful history and physical exam and without the use of MRI. Overall, Dr. Scarpinato maintains that there is a paucity of documentation and positive findings to support the MRIs of the right shoulder and lumbar spine. According to Dr. Scarpinato, the referrals were made far too early in the rehabilitation process, as the records are devoid of documentation establishing an adequate and failed trial of conservative rehabilitation before the imaging studies were considered.

The reports of Drs. Roth and Scarpinato are sufficient to support Respondent's denials based upon a lack of medical necessity as they maintain a factual basis and medically cogent rationale to support their respective opinions that the MRI studies at issue were not medically necessary. Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant

which must then present its own evidence of medical necessity. *Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company*, 2008 NY Slip Op. 50456U, 18 Misc.3d 1147A, 2008; *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131, 824 N.Y.S.2d 759 (App. Term 2nd Dept. 2006).

Rebuttal

In support of its claim, Applicant relies upon the medical records contained in evidence in the record below. Applicant also offers a report by Regina Moshe, MD prepared specifically in rebuttal to the peer review reports.

Addenda

Respondent offers reports by Drs. Roth and Scarpinato responsive to Dr. Moshe's rebuttal.

Conclusion

Comparing the relevant evidence presented by both parties against each other, and upon consideration of the oral arguments presented by counsel, I find that the Applicant has not rebutted the peer review report and has not established the medical necessity for the MRI studies at issue. In order to meet the burden of persuasion in regard to medical necessity, in the absence of factually contradictory records, the applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. Dr. Moshe's rebuttal does not adequately establish that the peer reviewers' standards of care were either incorrect, inapplicable, or had been sufficiently fulfilled in this case. With respect to the MRI of the brain, Ms. Robinson contends that it was ordered to rule out subdural hematoma "in view of the history of concussion and persistent headache." However, the "History" and "Current Complaints" sections of Ms. Robinson's own initial evaluation report note intermittent rather than persistent headaches, without nausea, and that the "patient did not incur head injury". Therefore, I am persuaded by Dr. Roth that the findings in the evaluation report, namely, intermittent headaches, standing alone, fail to support the necessity of an MRI of the brain. Similarly, with respect to the remaining MRIs of the cervical, thoracic, and lumbar spine and right shoulder, I am persuaded by both Dr. Roth and Dr. Scarpinato that the MRIs were routinely ordered without any need demonstrated, especially in light of the fact that they were ordered following an initial examination, and prior to the benefit of any conservative care. Overall, I am persuaded by Drs. Roth and Scarpinato that the diagnoses of sprain and strain identified in the initial evaluation report did not warrant the immediate ordering of the MRI studies of the spine and shoulder.

Accordingly, Respondent's denials are sustained.

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 NC

SS :

County of Brunswick

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

09/11/2025

(Dated)

Alison Berdnik

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:
432546a5a7c95281d7cc54ed4df49cbd

Electronically Signed

Your name: Alison Berdnik
Signed on: 09/11/2025