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In the Matter of the Arbitration between:

|                                                              |                          |                      |
|--------------------------------------------------------------|--------------------------|----------------------|
| All County LLC / <b>Applicant_1</b><br>(Applicant)           | AAA Case No.             | 412010016102         |
| - and -                                                      | AAA Assessment No.       | 17 991 10445 10      |
| <b>Liberty Mutual Fire Insurance Company</b><br>(Respondent) | Applicant's File No.     |                      |
|                                                              | Insurer's Claim File No. | LA2030115809060<br>3 |

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**ARBITRATION AWARD**

I, Howard D. Jacob, Esq., 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:Eligible Injured Person

**1. Hearing(s) held on**

06/17/10

and declared closed by the arbitrator on 6/17/10.

Law Offices of Rubin & Licatesi, by Alan Elis participated in person for the Applicant.  
Robert Trestman, Esq. participated in person for the Respondent.

**2. The amount claimed in the Arbitration Request, \$1,747.40, 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**

The issue in this arbitration is the Applicant's unpaid bill for MRIs, denied by the Respondent based on their peer review.

**4. Findings, Conclusions, and Basis Therefor**

The Applicant brought this arbitration proceeding to obtain payment of \$1,747.40 for MRIs of the cervical spine and the right shoulder done on August 25, 2009. The conciliation submissions of both parties were made part of the record.

The patient was involved in a motor vehicle accident on June 30, 2009. On July 16, 2009, she had an initial physiatric consultation with Dr. Ki Young Park. She was complaining of neck pain radiating to the upper extremity with paresthesia and pain in the right shoulder. The physical examination and the neurological examination revealed diminished range of motion in the neck and the right shoulder, diminished motor strength in the right shoulder (good-) normal reflexes, and diminished sensation in the right C5-C6-C7 dermatomes. There was tenderness in the right shoulder and in the cervical spine. The diagnoses were acute traumatic strain/sprain of the cervical muscles and ligaments, a rule out of post-traumatic cervical discogenic disease and radiculopathy, and post-traumatic right shoulder strain/sprain with a rule out of ligament/tendon tear. Dr. Park ordered MRIs of the cervical spine and the right shoulder. The MRI's were done on August 25, 2009. No evidence of a follow-up evaluation after the prescription and prior to the performance of the MRIs was submitted.

The cervical MRI revealed subligamentous posterior disc herniations throughout the cervical spine. The MRI of the right shoulder revealed hypertrophic changes in the acromioclavicular joint with supraspinatus impingement consistent with a partial tear of the supraspinatus tendon.

The Respondent denied reimbursement based on the peer review of Dr. Robert Simon. As to the cervical MRI, he stated that the usual method of management for radiculopathy with no significant neurological loss resulting from cervical disc herniations is non-operative care for some *ill-defined* period of time. He also stated that many studies have documented a high prevalence of disc abnormalities on imaging of asymptomatic subjects. He cited an article on imaging of the lumbar spine to support this proposition. He further stated that MRIs should be reserved for patients who have signs and symptoms of radiculopathy, who have not responded to conservative treatment. No reference was cited for this proposition.

As to the MRI of the right shoulder, he stated that a complete physical examination of the shoulder was not performed and that it was first necessary to perform a complete physical examination prior to recommending and/or performing diagnostic imaging such as an MRI. He also stated that the patient should have been observed for a period of at least several weeks to allow for the spontaneous resolution of shoulder pain with conservative treatment. He cited a reference for this proposition. He stated that an MRI of the shoulder might have been indicated if there were persistent and/or worsening pain, a diagnostic dilemma, or surgical intervention was being contemplated.

Apparently, in response to the denial, a medical necessity letter was submitted from Dr. Park in which he indicated that the MRIs were done to rule out disc injury in the cervical spine and ligament/tendon tear in the right shoulder.

I have considered the evidence submitted by both sides. There is a conflict of expert opinion. As to the cervical spine, I find that the Respondent did not meet their burden of proof under the Nir case to cite evidence of medical standards. Therefore, I find that this aspect of the denial cannot be sustained. The Respondent is responsible for payment of \$874.73 for the MRI of the cervical spine.

As to the MRI of the right shoulder, I will rely on the opinion of Dr. Simon that it was prescribed prematurely. This aspect of the denial is sustained.

The Respondent is responsible for payment of \$874.73.

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.

Accordingly, the applicant is AWARDED the following:

A.

| Benefits                | Amount Claimed | Amount Awarded |
|-------------------------|----------------|----------------|
| Health Service Benefits | 1,747.40       | 874.73         |

|                |            |          |
|----------------|------------|----------|
| <b>Totals:</b> | \$1,747.40 | \$874.73 |
|----------------|------------|----------|

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 04/07/2010, which is a relevant date only to the extent set forth below.)

Interest will run from the arbitration filing date.

- C. Attorney's Fees

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

The Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). Since the within arbitration request was filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(e).

- 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 New York

SS :

County of Nassau.

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



(Howard D. Jacob, Esq.)

7/7/10

(Dated)

#### 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.*