

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Deer Park PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-16-1038-6661

Applicant's File No.

Insurer's Claim File No. 03903447372MH

NAIC No. 17230

**ARBITRATION AWARD**

I, James Hogan, 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 06/01/2017  
Declared closed by the arbitrator on 06/01/2017

Jan Chow from Dash Law Firm, P.C. participated in person for the Applicant

Allison Lindsey from Allstate Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,316.73**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties have agreed that the Applicant has established its prima facie case.

The parties have agreed that the Respondent's denials were timely.

The parties have agreed that the amount in controversy is in accordance with the fee schedule.

3. Summary of Issues in Dispute

The EIP, a 50 year old male, was injured in a collision on 11/4/15. This claim is for an MRI of the lumbar spine with additional views in flexion and extension administered by

the Applicant on 12/12/15, and billed in the amount of \$1,262.00; the recumbent view, was also administered by the Applicant on 12/12/15, and billed in the amount of \$175.00; an MRI of the cervical spine administered by the Applicant on 1/4/16 and billed in the amount of \$879.73.

The Respondent denied all of the Applicant's claims based upon peer reviews done by Howard Levin, M.D. on 1/19/16 and on 2/10/16. Dr. Levin opined that the medical necessity for the services had not been established.

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

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

##### **SUMMARY OF THE CASE:**

The EIP, a 50 year old male, was injured in a collision on 11/4/15. This claim is for an MRI of the lumbar spine with additional views in flexion and extension administered by the Applicant on 12/12/15, and billed in the amount of \$1,262.00; the recumbent view, was also administered by the Applicant on 12/12/15, and billed in the amount of \$175.00; an MRI of the cervical spine administered by the Applicant on 1/4/16 and billed in the amount of \$879.73.

The Respondent denied all of the Applicant's claims based upon peer reviews done by Howard Levin, M.D. on 1/19/16 and on 2/10/16. Dr. Levin opined that the medical necessity for the services had not been established.

##### **Applicant's submission:**

The Applicant has provided a copy of its billing, and an AOB signed by the EIP in favor of the Applicant.

The Applicant has also provided copies of the Respondent's NF-10.

Also provided is a copy of the MRI reports and a referral for the MRIs. The MRI reports are addressed to Thomas Heinisch, PA of West Islip, NY. The name of the referring doctor on the referral forms is illegible.

**The Applicant has filed report from David Weissberg, MD, of Huntington Station, NY.**

**On Dr. Weissberg saw the EIP on 12/2/15 as a "f/u of left hip pain s/p THA years ago, right hip greater trochanter bursitis, c spine spr/str, and L spine spr/str, s/p MVC in November." (sic)**

The PX of the neck records limited ROM, but it is not compared to normal. Tenderness was noted in the paracervical, bilaterally; extension was normal and no spasms were noted. Muscle strength was 5/5/ throughout the upper extremities.

The PX of the back found reduced ROM in flexion and extension; tenderness was noted, bilaterally; no spasms noted; muscle strength was 4/5 except hip, knee, ankle and toe strength was 5/5 throughout. DTRs of the knee and ankle were +1; SLR was positive.

The right hip exam found flexion limited to 75°; tenderness noted in the greater trochanteric bursa; negative Impingement Sign; internal rotation was normal; external rotation was normal.

The left hip had limited flexion to 75°, with pain; internal rotation was limited to 10°, with pain; external rotation was limited to 10°, with pain and no tenderness was noted.

The Assessment was trochanteric bursitis, unspecified, hip.

X-rays of the left hip did not disclose any fractures, "no loosening a prosthesis."

The EIP received an injection to the hip.

The Plan included obtaining an MRI of the lumbar spine and to continue with chiropractic and P/T.

**On 12/16/15, the EIP saw Dr. Weissberg, again.** This was a follow-up examination for left hip pain secondary to a motor vehicle accident in November. In addition to the left hip pain, there was also right hip pain and greater trochanteric bursitis; there was cervical spine sprain/strain as well as lumbar spine sprain/strain. The patient claimed that is pain and discomfort in the right hip has "gotten so much better" since the prior Kenalog injection, which he received on his last visit. He continues to have left hip pain and pain in the neck and lower back. The low back pain was now 7/10 and sharp and was worse with ambulation.

The general examination was unremarkable.

**The examination of the neck** records the range of motion in flexion, bilateral lateral rotation but does not compare these readings to normal. They appear to be less than normal. Extension is indicated as normal. No spasms were noted.

Muscle strength was 4/5 and it was noted that shoulder, elbow, wrist and finger strength were 5/5, throughout; the DTRs at the elbow and wrist were +1. Negative Axial Compression test.

**The examination of the back** records flexion at 65° and extension at 15°. There is no comparison to normal ROM. Tenderness was noted bilaterally in the paraspinal muscles; no spasm noted.

Muscle strength was 4/5 but the hip, knee, ankle and toe strength are 5/5 throughout; DTRs were +1 in the knee and ankle; positive SLR on the right side

**The examination of the right hip** found flexion was limited to 75°, but not compared to normal; tenderness was noted in the greater trochanteric bursa; negative anterior Impingement sign; internal rotation and external rotation were normal.

**The examination of the left hip** found flexion was limited to 75° with pain, and the internal rotation was limited to 10°, with pain; external rotation was limited to 10° with pain. These ROMs were not compared to normal; No tenderness noted.

The Assessment was: trochanteric bursitis, unspecified hip.

The MRI the lumbar spine showed multiple disc bulges and herniation, incidentally, a 1 cm lesion is appreciated over the right kidney.

This document indicates that an injection was administered to the EIP's hip and the greater trochanteric bursa. The injection was given under ultrasound guidance.

As part of the Plan it is noted that an MRI of the cervical spine would be ordered as well as for the EIP to continue with chiropractic, and physical therapy.

There is also a note that EMG/NCV of the lower extremities would be administered.

**Respondent's submission:**

The position of the Respondent is that the Applicant's claim was properly denied based upon peer reviews done by Howard Levin, M.D.

**On 1/25/16, the Respondent issued an NF-10 denying the MRI the lumbar spine, with additional views, based upon a peer review done by Dr. Levin.**

**On 2/16/15, Respondent issued an NF-10 denying the MRI of the cervical spine based upon a peer review by Dr. Levin.**

**The Respondent has provided a copy of an initial evaluation dated 11/11/15 from David Weissberg, MD.** The EIP presented himself as a result of a motor vehicle accident on 11/4/15. In the accident, he injured his low back and his legs felt weak. It appears that he has had a hip replacement and he injured this hip as well as his ankles.

The PX indicates that the EIP's neck had limited range of motion which was not quantified; there was tenderness and spasm noted. Muscle strength in the upper extremities was indicated as 5/5.

The range of motion in the back was limited in flexion and extension; tenderness and spasm were noted; muscle strength was indicated at 5/5 throughout the lower extremities.

The right hip flexion was normal as well as internal and external rotation. No tenderness was noted.

As to the left hip, flexion was limited to 60°, with pain; internal rotation and external rotation were each limited to 10°, with pain; tenderness was noted in the greater trochanteric bursa.

X-rays were taken of the cervical spine, lumbar spine, pelvis and the left hip.

The Plan called for a triple phase bone scan; physical therapy for the left hip; chiropractic for the cervical spine and lumbar spine. Follow-up in approximately 3 weeks.

**On 12/2/15, the EIP had a follow-up at Dr. Weissberg's office. (see above)**

**On 12/16/15, the EIP had a follow-up visit with Dr. Weissberg. (see above)**

The Respondent has provided copies of the MRI reports for the lumbar spine, done on 12/12/15. I see that this report contains and interpretation of the scan in the flexion position, the extension position and in the recumbent position.

The Respondent has provided a copy of the 3 phase bone scan x-ray of the left hip. This was done on 11/19/15.

The Respondent has provided a copy of a manual muscle test administered to the EIP on 12/28/15 by Gary Cullin, DC. This test was a baseline and would be used for future comparisons. The findings indicate that the muscle strength of the EIP is reduced in all planes from 28% and left lumbar lateral flexion to a high of 68% in cervical extension. There is a note that these measurements were taken with a computerized tool inclinometer. The actual performance of the EIP was compared to the AMA guidelines.

**The EIP had another visit with Dr. Weissberg, but this was on 1/11/16, after the MRIs in question were administered.**

**On 1/19/16, the EIP had EMG/NCV studies of the upper extremities administered by Ralph Mangels, DC. The raw data for the testing has been provided.**

**Peer Reviews:**

**Howard Levin, M.D. did a peer review on 1/19/16. The purpose of the peer review was to determine the medical necessity for the bone scan of the left hip. This test is not part of this claim.**

**Howard Levin, M.D., did a peer review on 1/19/16** to determine the medical necessity of the MRI of the lumbar spine done on 12/12/15.

He lists a number of medical records that he has reviewed and these include progress and treatment notes dated 11/11, 12/2, and 12/16/15 from David Weissberg, MD. He has also reviewed the MRI of the lumbar spine and a referral for that MRI from Thomas Heinisch, PA.

Dr. Levin recounts the EIP's accident history and notes that he initially presented himself to Dr. Weissberg on 11/11/15 with complaints of pain in the low back and left hip. As a result of the examination, the plan was for a triple phase bone scan, a prescription for left hip physical therapy, cervical and lumbar spine chiropractic care and an MRI of the lumbar spine. The MRI was done on 12/12/15.

Dr. Levin notes that the referral for the MRI was signed by Thomas Heinisch, PA, and that the recommendation for that study was documented in the 12/2/15 report from Dr. Weissberg.

As per Dr. Levin, "At that time, the claimant complained of low back pain without any pain radiation or any radicular symptoms such as numbness, weakness or tingling into the lower extremities. Physical examination of the lumbar spine revealed tenderness and limited range of motion on flexion and extension. Straight leg raising was positive and no other special tests for the lumbar spine such as Kemp's and/or Valsalva's were performed.

"Neurological examination of the lower extremities revealed no motor or sensory deficits and the deep tendon reflexes were indicated at +1. Despite the limited findings, the MRI scan of the lumbar spine was recommended by Dr. Weissberg on 12/02/15 and no diagnosis to be ruled out by the study was indicated."

Dr. Levin says that based upon the above, there is not sufficient clinical information to justify the recommendation for this study on 12/2/15. Furthermore, there is no evidence that this claimant's physiological and neurological status was deteriorating despite an adherence to conservative treatment.

Further, there is no explanation as to how the results of the MRI would impact the treatment course for this claimant. There is no evidence that the MRI test was performed as part of a pre-surgical evaluation.

He goes on to say that the MRI was not prescribed in accordance with generally accepted standards of medical practice and was not clinically appropriate for this particular claimant. Therefore, Dr. Levin opines that the MRI the lumbar spine was not medically necessary.

He then says "Finally, 'MRI or CT scan study should be considered in patients with worsening neurological deficits or a suspected systemic cause of back pain such as infection or neoplasm. These imaging studies may also be appropriate when referral for surgery is a possibility.' (See *American Family Physicians*, *American Academy of*

*Family Physicians, Vol 61/No. 6 (Marcy 15, 2000), Diagnosis and Management of Acute Low Back Pain, Atul T. Patel, MD and Abna A. Ogle, MD). The above clinical scenario was not adhered to."*

I note that the Respondent has not provided a copy of the article reference by Dr. Levin.

**On 2/10/16, Dr. Levin did a peer review to determine the medical necessity for the MRI of the cervical spine.**

He lists a number of documents that he has reviewed. These include progress notes dated 11/11, 12/2 and 12/16/15 as well as 1/11/16 by David Weissberg, MD.

Dr. Levin recounts the EIP's accident history and notes that the EIP was evaluated by Dr. Weissberg on 11/11/15. He then says that the EIP had a cervical spine MRI done on 1/4/16.

In the "Conclusion" section of his report, Dr. Levin says that the MRI the cervical spine was not medically necessary.

He notes that the referral for this procedure was signed by Thomas Heinisch, PA, and the recommendation for the study was documented in the examination report by Dr. Weissberg dated 12/16/15.

As per Dr. Levin, "At that time, the claimant complained of neck pain without any pain radiation or any radicular symptoms such as numbness, weakness or tingling into the upper extremities. Physical examination of the cervical spine revealed tenderness and limited range of motion. Cervical compression was negative and no other special tests for the cervical spine such as distraction, Soto Hall and/or Valsalva's were performed. Neurological examination of the upper extremities revealed no motor or sensory deficits. Despite the limited findings, the MRI scan of the cervical spine was recommended by Dr. Weissberg in the report dated 12/16/15."

He then says that based upon the above, there is not sufficient clinical information to justify the recommendation for this study on 12/16/15. Furthermore, there is no evidence that this claimant's physiological and neurological status was deteriorating despite an adherence to conservative treatment.

"There is no explanation as to how the results of the MRI would impact the treatment course for this claimant. There is no evidence that the MRI test was performed as part of a pre-surgical evaluation."

As per Dr. Levin, the MRI was not prescribed in accordance with generally accepted standards of medical practice and was not clinically appropriate for this particular claimant. Therefore, it was not medically necessary.

He then refers to a 2011 article from the National Guidelines Clearinghouse NGC: 008518, Neck and upper back (acute and chronic) saying that "...one of the indications for an MRI the cervical spine is 'significant neurological findings and failure to respond

to conservative therapy despite compliance with therapeutic regimen.'" As per Dr. Levin, "The above clinical scenario was not adhered to."

I note that a copy of the article referred to by Dr. Levin has not been provided.

**At the hearing:**

Applicant argued that Dr. Levin relied upon Dr. Weissberg's reports and not any reports from the person who requested the MRIs, Thomas Heinisch, PA. Mr. Heinisch is located in West Islip and Dr. Weissberg is in Huntington Station. There is nothing to indicate a relationship between the two.

In addition, Dr. Weissberg refers to the MRIs in his reports. The cervical spine MRI was done about 4 weeks post-accident and the lumbar spine MRI was done about 5 weeks post-accident.

Respondent argued that the patient complained of neck pain, and there was no other significant complaints as to the cervical spine. No neurological deficits were noted.

As to the lumbar spine, there was reduced ROM but no motor or sensory deficits noted.

In addition, there was nothing in the reports to indicate the need for the additional views.

**FINDINGS:**

The Applicant has established its *prima facie* case.

The Applicant's claim is for MRIs of the lumbar spine and the cervical spine.

The Respondent has denied these claims based upon 2 separate peer reviews, both done by Howard Levin, M.D. Dr. Levin opined that each MRI was not medically necessary.

In his peer reviews, he cites to articles in support of his contention, but the Respondent has not provided copies of the articles, and as a result, we are unable to confirm whether they are applicable to the MRIs at issue and to the circumstances in this case.

Respondent's failing to provide a copy of the articles is not a fatal defect in the Respondent's case, but such failure does have a negative effect upon the weight of the peer review.

As to the peer review for the MRI of the lumbar spine, Dr. Levin refers to a 2000 article found in the American Family Physicians. He says that MRI or CT should be considered in patients with worsening neurological deficits where there is a suspected systemic cause of back pain such as infection or neoplasm. These imaging studies may also be appropriate when referral for surgery is a possibility. He concludes by saying that the above clinical scenario was not adhered to, and as a result, he recommended a denial of that MRI.



Without a copy of the article relied upon by Dr. Levin, we are unable to ascertain whether or not there are other criteria or scenarios discussed which were not part of this summary by Dr. Levin.

I am not convinced that the MRI of the lumbar spine was not medically necessary.

In looking at the peer review for the cervical spine, Dr. Levin refers to an article from the National Guidelines Clearinghouse for the neck and upper back (acute and chronic). He says "...one of the indications for an MRI the cervical spine is significant neurological findings and failure to respond to conservative therapy despite compliance with the therapeutic regimen." Then he concludes that "The above clinical scenario was not adhered to."

In the 1<sup>st</sup> instance, there is nothing as to the other indications for the MRI of the cervical spine. There may very well be other indicators which were met in this instance but not provided by Dr. Levin. As such, I am not convinced that the MRI the cervical spine was not medically necessary.

After reviewing all the documents contained in the file, and listening to the arguments of the parties at the hearing, I have concluded that the Respondent has failed to rebut the Applicant's *prima facie* case.

I also note that there has not been any demonstration as to the need for the additional views. They are denied.

The claim is awarded in the amount of \$912.00 for the lumbar spine MRI and \$879.73 for the cervical spine MRI, for a **total award of \$1,791.73**.

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.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Stand Up MRI of Deer Park PC	12/12/15 - 01/04/16	\$2,316.73	Awarded: \$1,791.73
Total			\$2,316.73	Awarded: \$1,791.73

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 07/14/2016, which is a relevant date only to the extent set forth below.)

As per Insurance Regulation 65-3.9, interest is due on arbitration or litigation amounts until such amount is paid. Such interest will be paid to the applicant or the applicant's assignee without demand therefore.

C. Attorney's Fees

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

The insurer shall pay the Applicant's attorney in accordance with 11 NYCRR 65-4.6(e). However, 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(b).

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 Suffolk

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

06/02/2017  
(Dated)

James Hogan

### **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:**  
236e10ad16900448d1a5b5b00cab0b6b

### **Electronically Signed**

Your name: James Hogan  
Signed on: 06/02/2017