

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Medicsurg (Applicant)	AAA Case No.	17-16-1047-7273
- and -	Applicant's File No.	212629
	Insurer's Claim File No.	0399812865 2AP
Allstate Insurance Company (Respondent)	NAIC No.	19232

**ARBITRATION AWARD**

I, Bernadette Connor, 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: Assignor

1. Hearing(s) held on 10/26/2017  
Declared closed by the arbitrator on 11/12/2017

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Jonathan Hack, Esq. from Peter C. Merani Esq. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ 16,875.00, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount claimed to \$3,891.15, in compliance with the fee schedule.

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

3. Summary of Issues in Dispute

Whether Applicant is entitled to reimbursement for medical services provided to the Assignor herein as a result of injuries sustained in a motor vehicle accident that occurred on January 2016.

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

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

The claim arises out of motor vehicle accident that occurred on January 27, 2016. The Assignor, a 50-year-old female, who was the driver of the vehicle, sustained injuries to the neck, back, and right shoulder. Applicant seeks reimbursement for a transforaminal epidural steroid injection of the lumbar spine and epidurography performed on April 16, 2016, June 11, 2016, July 9, 2016, July 23, 2016; anesthesia provided to the Assignor in connection with manipulation under anesthesia (MUA) performed on August 20, 2016; anesthesia for facet joint and trigger point injections provided to the Assignor on September 10, 2016.

Respondent denied payment for the transforaminal epidural steroid injection performed on April 16, 2016 based on a medical report dated September June 1, 2016 from Sammy Dean, M.D. Respondent's denials for all services provided from June 11, 2016 through September 10, 2016 were predicated on an IME report dated May 3, 2016 from Teresa Habacker, M.D.

#### **Dr. Dean's report:**

Dr. Dean argued that the transforaminal epidural steroid injection was not medically necessary. Dr. Dean indicated that the standard of care for the treatment of shoulder, hip, and spine pain following trauma consists of an evaluation by a physician followed by conservative treatment, including physical therapy for a period of four to six weeks, and anti-inflammatory medication. Dr. Dean argued that if the patient's condition fails to improve under conservative treatment or the symptoms worsen, then an MRI or interventional types of treatment may be indicated. According to Dr. Dean, epidural steroid injection is an appropriate treatment option in instances where there is clinical

evidence of radiculopathy, diagnostic testing confirms the clinical findings and there is a failure of conservative treatment. Dr. Dean also indicated that epidural injections should be performed in combination with an active physical therapy treatment program.

**Dr. Habacker's IME report:**

Dr. Habacker performed an orthopedic examination on April 19, 2016, and concluded that the Assignor was not in need of further treatment. Dr. Habacker indicated that at the time of the examination, the Assignor reported that her condition had improved since she started treatment. However, she still complained of experiencing neck pain that radiated to the right arm, lower back pain that radiated to the bilateral legs, bilateral hip pain, right arm pain and right shoulder pain. The Assignor also complained of intermittent numbness and tingling sensations in the right hand. Dr. Habacker indicated that examination of the cervical and lumbar areas of the spine revealed no tenderness, muscle spasm or limitation of motion. Straight leg raising test was negative. Examination of the bilateral shoulders revealed no erythema, edema, diffuse tenderness, muscle spasm or atrophy.

In response to Dr. Dean and Dr. Habacker's reports, Irfin A. Alladin, M.D., issued a rebuttal report. Dr. Alladin disagreed with the findings and conclusions of Respondent's consultants. He indicated that the records show that the Assignor remained symptomatic in spite of receiving physical therapy and chiropractic treatment. She continued to complain of pain in the neck, back, shoulders, hips, and right leg pain. Dr. Alladin noted that at examinations performed on February 9, 2016, the Assignor complained of radiating neck and back pain and right shoulder pain. At an examination performed on April 1, 2016, the Assignor had restricted ranges of motion of the cervical and lumbar regions of the spine. Examination further revealed tenderness, muscle spasm and trigger points along the cervical, thoracic and lumbar paraspinal muscles.

Dr. Alladin indicated that he initially evaluated the Assignor on April 4, 2016. She reported that the pain was aggravated by prolonged standing, walking, bending, lifting and climbing steps. Dr. Alladin noted that his examination of the Assignor revealed findings that included restricted ranges of motion of the cervical and spine and the lumbar spine, muscle spasm and muscle weakness. Orthopedic tests were positive, including straight leg raising test, Lasegue's test, shoulder decompression test, and Hawkins' test.

Dr. Alladin indicated that the transforaminal epidural steroid injection is not only used to treat spinal pain, it can also be used to diagnose the source of nerve pain. Nerve root inflammation may be caused by irritation disc herniation or rupture, arthritis or narrowing of the spinal canal.

Dr. Alladin further argued that the Assignor was in need of treatment at the time of Dr. Habacker's report on April 19, 2016. He pointed out that Dr. Habacker noted the Assignor's complaints of radiating neck and back pain, right shoulder pain, and bilateral hip pain. Dr. Habacker's finding upon examination revealed restricted ranges of motion of the bilateral shoulders, hips, and lumbar spine. Dr. Alladin further noted that he

reevaluated the Assignor on April 22, 2016, three days after Dr. Habacker's examination. The Assignor presented with complaints that included radiating neck and back pain with associated numbness and tingling. Dr. Alladin indicated that examination of the cervical and lumbar areas of the spine revealed restricted ranges of motion, tenderness, muscle spasm, and muscle weakness of the upper and lower extremities. He also found hypoaesthesia along the right L5-S1 dermatomes.

**Decision:**

I find that Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006, Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3<sup>rd</sup> 128, 784 N.Y.S. 2d 918 (2003).

Once Applicant establishes a prima facie case of medical necessity, the burden then shifts to Respondent. Respondent must then produce a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic P.C. v. National Assurance Co.*, 5 Misc. 3d 975; *Citywide Social Work, et. al. v. Travelers Indemnity Co.*, 3 Misc. 3d 608. An IME doctor must set forth a clear factual basis and medical rationale for concluding that further health care services were not medically necessary. *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc. 3d 144 (A), 873 N.Y.S.2d 238, 2008 N.Y. Slip Op. 51863 (U), (App. Term 2<sup>nd</sup> & 11<sup>th</sup> Dists. Sept.3, 2008).

After carefully reviewing the evidence presented, including the addendum reports from Dr. Dean and Dr. Habacker, I find that Respondent has failed to rebut Applicant's prima facie case of medical necessity. Dr. Alladin's rebuttal report persuasively and credibly demonstrated that the Assignor remained symptomatic during the dates of treatment at issue. Dr. Alladin also demonstrated that the services provided to the Assignor on April 16, 2016, were reasonable and medically necessary.

Accordingly, Applicant is awarded the sum of \$3,891.15.

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	Amount Amended	Status
	Medicsurg	04/16/16 - 09/10/16	\$16,875.00	\$3,891.15	Awarded: \$3,891.15
Total			\$16,875.00		Awarded: \$3,891.15

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 11/02/2016, which is a relevant date only to the extent set forth below.)

Respondent issued timely denials for Applicant's claim. Therefore, pursuant to *LMK Psychological Services*, 12 N.Y.3d 217, 879 N.Y.S.2d 14 (2009), interest shall begin to accrue as of the date the claim is received by the American Arbitration Association until payment is made. The record reveals that the American Arbitration Association received the request for arbitration on November 2, 2016. The interest shall be two percent per month, simple, not compounded, on a pro rata basis using a 30 day month.

C. Attorney's Fees

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

With respect to the claim for which compensation was awarded, Respondent shall pay 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 are equal to or less than 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 New York

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

12/26/2017  
(Dated)

Bernadette Connor

#### **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:**  
778107a6b213d5a5cb457a1c307a22c8

### **Electronically Signed**

Your name: Bernadette Connor  
Signed on: 12/26/2017