

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-18-1103-9029

Applicant's File No. 2143125

Insurer's Claim File No. 000320529 002

NAIC No. 10839

ARBITRATION AWARD

I, Tara Maher, 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 09/30/2019
Declared closed by the arbitrator on 09/30/2019

Vijay Gupta, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Cody Robar, Esq. from Jaffe & Velazquez, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 92.98**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the amount in dispute conforms to the proper fee schedule.

3. Summary of Issues in Dispute

Whether applicant is entitled to no fault benefits for an office visit provided to the assignor on 7/3/18 following involvement in a motor vehicle accident on 9/14/16.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the ADR case center record maintained by the American Arbitration Association. The findings below are based upon documents reviewed in the case record and the parties' respective positions at the hearing.

It is well settled that the health care provider establishes its prima facie entitlement to no-fault benefits under article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 AD3d 742(2 Dept. 2004); *Amaze Medical Supply v. Eagle Insurance*, 2 Misc. 3d 128A, 784 NYS2d 918, 2003 N.Y. Slip Op 5170IU (App. Term, 2d & 11 Jud. Dist.). I find that applicant has met its prima facie burden.

The burden now shifts to the insurer to show lack of medical necessity. See *Elm Medical P.C. v. American Home Assurance Co.*, 2003 Slip Op 51357U 2003 N.Y. Misc. Lexis 1337 [Civ. Ct., Kings Co., 2003]; *Fifth Avenue Pain Control Ctr. V. Allstate Ins. Co.*, 196 Misc. 2d 801, 766 NYS2d 748 [Civ. Ct., Queens Co., 2003].

Upon a showing of lack of medical necessity through a peer review, an applicant is required to rebut same. See *A Khodadadi Radiology P.C. v. N.Y. Central Mutual Fire Ins. Co.*, 16 Misc. 3d 131(A), 841 N.Y.S.2d 824 (table), 2007 N.Y. Slip Op 51342(U), 2007 WL 1989432 (App. Term 2d & 11 Dist. July 3, 2007).

Applicant's assignor is a 23-year-old male passenger involved in a motor vehicle accident on 9/14/16. As a result of the accident, claimant sustained injury to his neck and back with complaints of pain radiating. He thereafter began a regimen of physical therapy and chiropractic treatments. The subject claim seeks reimbursement for an office visit provided to the assignor. I have carefully reviewed the medical treatment records and submissions of both parties.

Respondent timely denied the benefits claimed pursuant to the Orthopedic IME of Dr. Vitolo performed on 10/10/17 with an effective termination of benefits on 10/28/17. The salient portions of the orthopedic examination are positive for limited range of motion of the thoracolumbar spine on flexion and extension as well as right and left lateral rotation. Complaints of pain in the neck and lumbar spine are noted with radiation. Dr. Vitolo's impression was cervical and lumbar sprains/strains. However, Dr. Vitolo does not opine they are resolved. Based upon his assessment, carrier's consultant recommended against reimbursement for further treatment.

The necessity of the treatment is an issue of fact. Upon careful review of the credible medical evidence as contained in the record before me, I find the evidence favors applicant as a matter of fact. The credible medical evidence in the record before me establishes claimant was symptomatic and in need of further care in the post-IME denial period claimed. Inasmuch as Respondent has failed to sustain its burden, the claim is granted in its entirety.

Applicant is therefore awarded the sum of \$92.98.

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	Total	Status
	New York Spine Specialists LLP	07/03/18 - 07/03/18	\$92.98	\$ 92.98	Awarded: \$92.98
Total			\$92.98	Awarded: \$92.98	

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/23/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of filing for all timely denied claims and from the 30th day of presentment of the bill to the carrier for all claims not processed within the statutory 30-day time period. Interest on all awarded claims is to be paid at the rate of two percent per month, not compounded, on a pro-rata basis.

C. Attorney's Fees

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

Having been filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

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

09/30/2019
(Dated)

Tara Maher

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:
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Electronically Signed

Your name: Tara Maher
Signed on: 09/30/2019