

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1110-9932
	Applicant's File No.	2172661
- and -	Insurer's Claim File No.	0443271333 2PV
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

**ARBITRATION AWARD**

I, Keith Tola, 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 11/04/2019  
Declared closed by the arbitrator on 11/04/2019

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

John Palatianos, Esq. from Allstate Fire & Casualty Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 185.96**, 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

This case stems from a New York motor vehicle accident which occurred on December 24, 2016, wherein the EIP allegedly sustained injuries. Applicant seeks compensation for two follow-up office visits, on July 26, 2018 and September 7, 2018. Respondent denied the claim for lack of medical necessity, based on the Independent Orthopedic Examination conducted by Raghava Polavarapu, M.D.

4. Findings, Conclusions, and Basis Therefor

This Award was issued upon consideration of the parties' arguments and upon review of the relevant evidence contained within the ADR Center files.

### **MEDICAL NECESSITY**

The parties are respectfully directed to AAA Case No.: 17-17-1079-6964 (1/17/19), wherein another EIP sought compensation for services rendered to this EIP. The claims were denied based on the same IME of Dr. Polavarapu. Arbitrator Morgan determined respondent, in reliance upon the IME report and findings therein, satisfied its burden. Upon shifting the burden back to applicant, Arbitrator Morgan came to the following conclusion:

*"2017 performed by Dr. Hedayatnia. The injured person-assignor presented to Dr. Hedayatnia on May 26, 2017 with complaints of radiating back pain. Dr. Hedayatnia documented decreased range of motion for the lumbar spine, paresthesia of the right lower extremity, positive SLR on the right side and antalgic gait. He diagnosed the injured person-assignor with lumbar radiculopathy and recommended a lumbar epidural steroid injection performed on May 26, 2017. On June 9, 2017, the injured person-assignor's chief complaint was radiating neck pain with paresthesia of the right upper extremity. Dr. Hedayatnia documented severe cervical pain, failed conservative therapy, radicular symptoms and evidence of foraminal stenosis in radiological studies. He recommended a cervical epidural steroid injection to provide temporary relief and facilitate a more aggressive rehabilitative program.*

*The chronic and subjective complaints along with the positive findings sufficiently refute the findings and conclusions of Dr. Polavarapu and demonstrate that **at the time of the IME, the injured person-assignor was still in need of further treatment.** Respondent argued that the neurological evaluation by Dr. Bhattia on April 21, 2017 recommended a discontinuance of treatment and to take a watchful approach. I find that this report is not persuasive concerning the services herein since the injured person-assignor was specifically referred to Dr. Bhattia, neurologist, for complaints of headaches. A review of Dr. Bhattia's records reveals that he was recommending a discontinuance of use of tricyclic medication. The submitted contemporaneous medical records are factually sufficient to meet the burden of persuasion that the services were medically necessary, and therefore, the Applicant's claim is hereby granted. I note that Applicant additionally submitted records demonstrating continued treatment up to the date of service in dispute. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing."*

As can be seen, the issue of medical necessity for post-IME cut-off services has been decided by Arbitrator Morgan in favor of applicant. I hereby adopt her reasoning as if it were my own. Consequently, this claim is granted and applicant is awarded \$185.96.

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	07/26/18 - 07/26/18	\$92.98	\$ 185.96	Awarded: \$92.98
	New York Spine Specialists LLP	09/07/18 - 09/07/18	\$92.98	\$ 185.96	Awarded: \$92.98
Total			\$185.96	Awarded: \$185.96	

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/06/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant commenced arbitration by filing on 11/6/18. Applicant filed beyond 30 days from receipt of denials. As such, respondent shall pay applicant interest computed from the date of filing, 11/6/18, at the rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR § 65-3.9(e).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR Section 65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR Section 65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850.00" Id. The minimum attorney fee that shall be awarded is \$60.00. 11 NYCRR Section 65-4.5(c). 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 Section 65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360.00."

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

11/18/2019  
(Dated)

Keith Tola

**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:**  
e19ee3c84c6093eaf3d6886cbd131e6d

### **Electronically Signed**

Your name: Keith Tola  
Signed on: 11/18/2019