

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Amherst Medical Supply, LLC  
(Applicant)

- and -

Allstate Property and Casualty Insurance  
Company  
(Respondent)

AAA Case No. 17-19-1150-9860

Applicant's File No. 013-19-924

Insurer's Claim File No. 0539188664  
3WD

NAIC No. 17230

### **ARBITRATION AWARD**

I, Mona Bargnesi, 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 ["LD"]

1. Hearing(s) held on 07/21/2020  
Declared closed by the arbitrator on 07/21/2020

Michael R. Bombard, Esq. from Pasquale V. Bochiechio, P.C. participated by telephone for the Applicant

Robert Corbin, Esq. from Abrams, Cohen & Associates, PC participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 550.06**, 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

Whether Applicant is entitled to reimbursement for a multimode stimulator (MMS) dispensed on November 19, 2019.

Respondent denied reimbursement based on an independent medical examination (IME) by Edward Mills, MD, dated July 1, 2019.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's ADR Center as of the date of the hearing. These submissions are the record in this case.

This case arises out of a motor vehicle collision which occurred on March 23, 2019. The 50 year-old restrained driver allegedly injured her neck, right shoulder and knees.

Assignor sought chiropractic treatment with Heather Monin, DC.

On November 13, 2019, Dr. Monin prescribed the MMS to decrease pain, improve activities of daily living and increase overall function.

At a minimum, an insurer's burden on the issue of lack of medical necessity includes establishing a factual basis and medical rationale for the lack of medical necessity of the health care provider's services. Prime Psychological Services, P.C. v. Progressive Casualty Ins. Co., 24 Misc.3d 1244(A), 901 N.Y.S.2d 902 (Table), 2009 N.Y. Slip Op. 51868(U) at 3, 2009 WL 2780152 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009).

Edward Mills, MD, performed an IME on July 1, 2019. Assignor complained of head, neck and back pain, and reported an inability to do certain activities. Dr. Mills noted decreased cervical, thoracic and lumbar spine range of motion, no palpable muscle spasm and negative straight leg raise. He opined that her cervical sprain is resolving and that her back sprains had resolved, and stated that she should have on orthopedic follow-up in six weeks for assessment, but there is no need for medical equipment.

I find that the IME of Dr. Mills is insufficient to demonstrate that the MMS was not medically necessary. He found ongoing range of motion deficits, concluded that the cervical spine sprain had not resolved and that another orthopedic visit was appropriate, but failed to explain why medical equipment would not be helpful for pain and activities of daily living, which are reasons Dr. Monin listed in prescribing the device.

Therefore, Applicant is entitled to reimbursement.

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
	Amherst Medical Supply, LLC	11/19/19 - 11/19/19	\$550.06	Awarded: \$550.06
<b>Total</b>			<b>\$550.06</b>	<b>Awarded: \$550.06</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/20/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment.

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 an attorney's fee 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 Erie

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

08/19/2020

(Dated)

Mona Bargnesi

#### **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:**  
ccaddbeac881fb5a4fe1dc6676794c8d

**Electronically Signed**

Your name: Mona Bargnesi  
Signed on: 08/19/2020