

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Protechmed Inc. (Applicant)	AAA Case No.	17-18-1114-1102
- and -	Applicant's File No.	2173955
Allstate Insurance Company (Respondent)	Insurer's Claim File No.	0509823983 2MT
	NAIC No.	19232

### ARBITRATION AWARD

I, Michael Galeno, 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 08/28/2020  
Declared closed by the arbitrator on 08/28/2020

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

Meghan McDonough, Esq., from Law Offices of John Trop participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 871.96**, 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

On July 13, 2018, the Assignor, a 46-year-old female, was the driver of a motor vehicle which was involved in an accident. The primary issue in this case concerns the medical necessity of a "Pneumatic Compressor Nonsegmental" and appliance, and a shoulder orthosis, provided to the Assignor on 09/26/2018, post-surgery, by the Applicant. Respondent relied on a peer review prepared by Dr. Stuart Springer, on November 8, 2018, to assert the lack of medical necessity defense.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the relevant documents contained in the ECF for both parties and make my decision in reliance thereon.

On July 13, 2018, the Assignor, a 46-year-old female, was the driver of a motor vehicle which was involved in an accident.

On July 16, 2018, the Assignor was seen for an "Initial Comprehensive Examination" conducted by Dr. Jean Rhee. The Assignor presented with chief complaints of "headache/neck/shoulder/lower back/knee/ankle/elbow pain." After examination, the reported impression included cervical and lumbar sprains and radiculopathies, as well as left shoulder and elbow pains. Physical therapy "3-4 times a week" was recommended, along with medications, MRIs, and "Ortho" and "Neuro" consults.

On July 23, 2018, the Assignor had an MRI of the left shoulder taken at "Community Medical Imaging". The reported findings were: "There are prominent tendinitis changes are seen at the supraspinatus and infraspinatus tendons. There is moderate fluid at the subacromial-subdeltoid bursa. There is a type I acromion. There is linear increased midsubstance signal posteriorly at the supraspinatus tendon. A tear measuring 2 x 3 mm is noted. There is no impingement. The subscapularis and teres minor tendons are intact. There is no labral injury. The superior labrum and the biceps anchor are intact. There is no biceps tendon tear or tenosynovitis."

On September 5, 2018, the Assignor was seen at "New York Pain Center" by Dr. Tony Wanich. Examination of the Assignor's left shoulder revealed mild tenderness and mild range of motion limitations. A positive Hawkin's test, positive impingement sign, and positive Neer's test were noted. The Assignor was assessed with: posterior tibial tendinitis; left leg, ganglion, left ankle and foot; complex tear of medial meniscus, current injury, left knee, initial encounter; sprain of left rotator cuff capsule, initial encounter".

On September 26, 2018, the Assignor underwent arthroscopic surgery on her left shoulder, performed by Dr. Wanich. The Assignor was provided with a "pneumatic compression device, non-segmental pneumatic appliance, and shoulder orthosis", prescribed by Dr. Wanich following the left shoulder surgery.

On November 8, 2018, a peer review was prepared by Dr. Stuart Springer, "to determine the causality and medical necessity for the subject arthroscopic procedure and attendant services provided, including the subject items of DME. Dr. Springer stated, in relevant part: "In this clinical setting, as per the available medical documents the claimant received conservative treatment the form of acupuncture treatment from 08/27/2018 to 09/25/2018 i.e. approximately one month, for the left shoulder; which was inadequate to resolve the left shoulder pain. A corticosteroid injection was not performed. In addition, the documentation does not substantiate that the claimant had worsening or progression of left shoulder symptoms during the course of conservative care. **The above guideline**

stated that, surgical intervention should not be entertained before minimum of 6 months of conservative treatment. In this case, the claimant's left shoulder pain should have been treated with conservative therapy for at least 6 months. **Based on the guideline** and medical records, the left shoulder arthroscopy with decompression of subacromial space was not medically necessary. ... **Based on the guideline** and the medical records, the left shoulder arthroscopy with labrum and rotator cuff debridement were not medically necessary. ... Since the left shoulder surgery was not medically necessary, therefore, in regards to the above given guideline and citation, the pneumatic compression device was not medically necessary." (Emphasis added.)

I find the peer review to be marginally sufficient to establish Respondent's lack of medical necessity defense.

A rebuttal to the peer review was prepared by Dr. Tony Wanich, stating, in relevant part: "Dr. Stuart argues that there was an inadequate trial of conservative treatment. This is inaccurate. Please see the attached examination report wherein I stated that 'patient is at physical therapy, acupuncture, and injections without relief.' Dr. Springer further states that a corticosteroid injection should have been performed. Contrary to the peer, injections would not be beneficial or indicated for several reasons. One, they do not actually repair anything (especially tears) within the joint and only sometimes temporarily mask some of the symptoms. ... Based on the MRI of the left shoulder, which revealed a rotator cuff tear, it is inaccurate for Dr. Springer to argue that 'the claimant's left shoulder pain should have been treated with conservative care.' Partial tears should be surgically treated because if left untreated it will get worse with time (Citation omitted.) There is a substantial body of evidence that most partial tears do not heal on their own. Patients may experience improving or deteriorating symptoms, but the clinical and biomechanical data suggest that most of these tears progress become larger rather than smaller with time."

"For an expense to be considered medically necessary, the treatment, procedure, or service ordered by a qualified physician, must be based upon an objectively reasonable belief that it will assist in the patient's diagnosis and treatment, and cannot be reasonably dispensed with. Such treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence and must be reasonable in light of the subjective and objective evidence of the patient's complaints." Nir v. Progressive Ins. Co., 7 Misc.3d 1006 (A), 801 N.Y.S.2d 237, (Civ.Ct. Kings Co., Nadelson, J., Apr. 7, 2005).

The peer review cites guidelines and disputed facts as the basis for opining that the subject left shoulder arthroscopic surgery and attendant services, were not medically necessary. However, I find when its conclusion is compared and contrasted with the submitted rebuttal, it is countered and overcome, with a preponderance of credible evidence. Consequently, given the above referenced standard concerning medical necessity, Respondent's denial is not sustained.

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
	<b>Protechmed Inc.</b>	<b>09/26/18 - 09/26/18</b>	<b>\$871.96</b>	<b>Awarded: \$871.96</b>
<b>Total</b>			<b>\$871.96</b>	<b>Awarded: \$871.96</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/11/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest to accrue from the date arbitration was requested.

C. Attorney's Fees

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

As determined by applicable statute.

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

09/28/2020  
(Dated)

Michael Galeno

#### **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:**  
2e48ed6671f6e00c3f30deb5202982e7

**Electronically Signed**

Your name: Michael Galeno  
Signed on: 09/28/2020