

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bailey Outpatient Medical Services (Applicant)	AAA Case No.	17-20-1164-6548
	Applicant's File No.	239384
- and -	Insurer's Claim File No.	0569290224 SDD
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Andrew Horn, 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, eligible injured person, EIP.

1. Hearing(s) held on 11/30/2020
Declared closed by the arbitrator on 11/30/2020

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

Thomas Cooke, Esq., from Law Offices of John Trop, participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,889.81**, 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

In dispute is Applicant Bailey Outpatient Medical Services' claim as the assignee of a 26-year-old man injured in a motor vehicle accident on November 14, 2019, for payment for electromyography (EMG) and nerve conduction velocity (NCV) studies by Dr. Irfan A. Alladin on January 16, 2020.

The testing revealed evidence of right median neuropathy (carpal tunnel syndrome) at the wrist and cervical facet syndrome.

Respondent Allstate Fire and Casualty Insurance Company timely denied the claim based upon a peer review by Dr. Michael E. Tawfello.

To the extent that a fee schedule defense was also asserted, the insurance carrier's attorney acknowledged that there was no evidence of fee excessiveness in the record.

4. Findings, Conclusions, and Basis Therefor

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. See Countrywide Ins. Co. v. 563 Grand Med., P.C., 50 A.D.3d 313 (1st Dept. 2008); A.B. Med.Servs., PLLC v. LibertyMut. Ins. Co., 39 A.D.3d 779 (2d Dept. 2007).

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D.3d 13, 20 (2d Dept. 2009); Channel Chiropractic, P.C. v. Country-Wide Ins. Co., 38 A.D.3d 294 (1st Dept. 2007); Bronx Radiology, P.C. v. New York Cent.Mut. Fire Ins. Co., 17 Misc.3d 97 (App Term 1st Dept. 2007), such as by a qualified expert performing an independent medical examination, conducting a peer review of the injured person's treatment, or reconstructing of the accident. *Id.*

Although the insurance carrier contended that, "(b)ased on the results of an independent peer review, medical justification and/or necessity (could not) be established for the services billed," it did not submit Dr. Tawfello's report upon which its defense is based into evidence or provide any other evidentiary proof - or, for that matter, make any submission whatsoever -- and, thus, its lack of medical necessity defense fails as a matter of law. See NJ/NY Pain Mgt. v. Allstate Ins. Co., 45 Misc.3d 130(A) (App Term 1st Dept. 2014); Mollins v. Allstate Ins. Co., 20 Misc.3d 141(A) (App Term 1st Dept. 2008).

Accordingly, Respondent's denial is vacated and Applicant's claim is granted in its entirety.

This award is in full disposition of all No-Fault benefit claims submitted to this Arbitrator.

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
	Bailey Outpatient Medical Services	01/16/20 - 01/16/20	\$3,889.81	Awarded: \$3,889.81
Total			\$3,889.81	Awarded: \$3,889.81

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/08/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since Applicant did not file for arbitration within 30 days of receipt of Respondent's denial, the statutory tolling provision applies. Accordingly, the insurer shall pay interest on the claim from May 8, 2020, the date arbitration was initiated, until such time as payment is made.

C. Attorney's Fees

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

The insurer shall pay Applicant an attorney's fee, subject to a maximum fee of \$1,360.00, in accordance with 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 Bronx

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

12/01/2020
(Dated)

Andrew Horn

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: Andrew Horn
Signed on: 12/01/2020