

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NY Ambulatory & Anesthesia, P.C.  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-19-1127-3289

Applicant's File No. 3087412

Insurer's Claim File No. 0428978514

NAIC No. 19232

**ARBITRATION AWARD**

I, Lester Hill, 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 01/08/2021  
Declared closed by the arbitrator on 01/08/2021

Elvira Messina from Costella & Gordon LLP participated in person for the Applicant

Karen Stulgaitis from Law Offices Of Karen L. Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 189.07**, 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

Was the cervical epidural steroid injection administered to the EIP on March 21, 2017 medically unnecessary based upon the IME conducted by Dr. J. Serge Parisien December 15, 2016? This claim is for the anesthesia service for the procedure. The 54-year-old EIP was involved in a motor vehicle accident on September 15, 2016 and received treatment for injuries to the neck, low back, and left shoulder.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the cervical epidural steroid injection administered to the EIP on March 21, 2017 was medically unnecessary. This claim is for the anesthesia service for the procedure.

The basis of the respondent's timely denial is the IME conducted by Dr. J. Serge Parisien December 15, 2016.

I have reviewed the documents contained in the electronic case folder as of January 8, 2021. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on January 8, 2021.

An Applicant establishes a prima facie showing of its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and the payment of No-Fault benefits were overdue. *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D. 3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Ins. Co.*, 57 A.D. 3d 659, 868 N.Y.S. 2d 759 (2d Dept. 2008); *New York and Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D. 3d 512, 818 N.Y.S. 2d 583 (2d Dept.2006); *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, 30 A.D. 3d 727, 816 N.Y.S. 2d 587 (3d Dept. 2006); *Nyack Hospital v. Metropolitan Property & Casualty Insurance Co.*, 16 A.D.3d 564, 791 N.Y.S. 2d 658 (2d Dept. 2005). The submission of Respondent's NF-10 denial of claim form established that the insurer received the claim referenced therein as having been submitted by the provider and that the insured did not pay the claim. *Lopes v. Liberty Mutual Ins. Co.*, 24 Misc.3d 127 (A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

New York's Comprehensive Motor Vehicle Insurance Reparation Act requires an insurance carrier to reimburse an injured party (or his or her assignee) for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med., P.C.* 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007), if raised in a denial that is (1) timely, *Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co.*, 226 A.D. 2d 613 (2d Dept. 1996), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR Section 65-3.4 (11); *Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co.*, 16 A.D. 3d 564 (2d Dept. 2005); *Nyack Hosp. v. State Farm Mut. Auto Ins. Co.*, 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct.25 2004), and (3) promptly apprises the Applicant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated, *General Accident Ins. Group v. Cirucci*, 46 N.Y. 2d 862, 414 N.Y.S. 2d 512 (1979); *New York University Hosp. Rusk Ins. V. Hartford Acc. & Indem. Co.*, 32 A.D. 3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. Vladimir

Zlatnick, M.D. P.C. v. Travelers Indem. Co., 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on September 15, 2016. The EIP was treated at the emergency room of Methodist Hospital on the day of the accident. The EIP presented to Dr. Reddy on September 27, 2016 with complaints of pain in the neck, low back, and left shoulder. The examination reported reduced range of motion of the cervical and lumbar spine with spasms and tenderness in the cervical and lumbar musculature and tenderness and reduced range of motion of the left shoulder. The EIP was placed on a course of conservative treatment. The EIP presented to Dr. Reddy on October 19, 2016 with complaints of pain in the neck, low back, and left shoulder. The examination reported reduced range of motion of the cervical and lumbar spine with spasms and tenderness in the cervical and lumbar musculature and tenderness and reduced range of motion of the left shoulder.

Dr. Parisien conducted the orthopedic IME on December 15, 2016, at which time the EIP complained of pain in the neck, low back, and left shoulder. The examination reported normal range of motion of the cervical and lumbar spine with no tenderness or spasms and negative orthopedic testing, and normal range of motion of the left shoulder with negative orthopedic testing. The conclusion was that the EIP needed no further orthopedic treatment.

No-Fault benefits were terminated effective January 16, 2017.

The EIP presented to Dr. Reddy on January 6, 2017 with complaints of pain in the neck, low back, and left shoulder. The EIP was administered trigger point injections to the cervical musculature. The EIP underwent an MRI of the lumbar spine on January 18, 2017 which reported a disc herniation at L4-L5 and a disc bulge at L3-L4. The EIP underwent an MRI of the cervical spine on March 8, 2017 which reported disc bulges from C3 through C5 and hypertrophic changes. The EIP underwent an MRI of the left shoulder on March 8, 2017 which reported tears of the infraspinatus and supraspinatus tendons and a SLAP tear. The EIP was administered cervical epidural steroid injections on March 21, 2017. The EIP presented to Dr. Canty on May 2, 2017 with complaints of pain in the low back and left shoulder. The EIP reported 100% improvement in the cervical spine since the cervical epidural injection on March 21, 2017. The examination reported positive orthopedic testing for the lumbar spine and reduced range of motion and strength in the left shoulder.

I find that the respondent has not demonstrated by sufficient factual basis and medical rationale that the treatment subsequent to the IME cutoff was medically unnecessary. The credible IME report shifts the burden to the applicant to demonstrate medical necessity. I find the reports of Dr. Reddy and Dr. Canty, together with the MRI studies of the cervical and lumbar spine and left shoulder demonstrate that the treatment provided to the EIP subsequent to the IME cutoff was medically necessary. The

objective evidence reported in the MRI studies is consistent with the findings of the EIP's treating physicians. The subject of this arbitration is the cervical epidural steroid injection administered on March 21, 2017. Five weeks following the cervical epidural steroid injection on May 2, 2017, the EIP reported 100% improvement in the cervical spine. I find that the applicant has amply demonstrated that the treatment subsequent to the IME cutoff was medically necessary.

Additionally, Arbitrator Nicholas Tafuri, in AAA case number 17-17-1082-9163, determined that the treatment subsequent to the IME cutoff was medically necessary, denied upon the identical IME by Dr. Parisien.

Accordingly, applicant's claim is granted in its entirety.

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>NY Ambulatory &amp; Anesthesia, P.C.</b>	<b>03/21/17 - 03/21/17</b>	<b>\$189.07</b>	<b>Awarded: \$189.07</b>

<b>Total</b>	<b>\$189.07</b>	<b>Awarded: \$189.07</b>
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- B. The insurer shall also compute and pay the applicant interest set forth below. 05/02/2019 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 the filing of the AR1 at a rate of 2% per month, simple, ending with the payment of the claim.

C. Attorney's Fees

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

Attorney fees are awarded pursuant to 11NYCRR 65-4.6(e) at a rate of 20% of the awarded claim, including interest, to a maximum of \$1360.00.

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

01/08/2021  
(Dated)

Lester Hill

**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:**  
b28b89e17040b992a3c43a034fc4a349

### Electronically Signed

Your name: Lester Hill  
Signed on: 01/08/2021