

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-19-1140-3335

Applicant's File No. 2298708

Insurer's Claim File No. 0491955886

NAIC No. 19232

ARBITRATION AWARD

I, Robyn McAllister, 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 03/02/2021
Declared closed by the arbitrator on 03/02/2021

Ryan Berry, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated for the Applicant

James McNamara, Esq. from Law Offices Of Karen L. Lawrence participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 422.90**, 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 Respondent properly denied Applicant's claim for performing office visits for Assignor (OR), a 24 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on February 15, 2018, based on an Independent Medical Examination by Dr. Jeffrey Gutman.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$422.90 for performing office visits from May 6, 2019 to September 10, 2019 for Assignor (OR), a 24 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on February 15, 2018. Respondent timely denied Applicant's claim predicated on an Independent Medical Examination ("IME") on January 14, 2019 by Dr. Jeffrey Gutman.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. At the hearing, Respondent argued that it properly denied Applicant's claim since the services rendered were not medically necessary. I disagree. I was not persuaded by the IME report dated January 14, 2019 by Dr. Jeffrey Gutman, submitted by Respondent in support of its denials.

Dr. Gutman examined Assignor on January 14, 2019. According to Dr. Gutman, Assignor was working full time as a carpenter at the time of the IME. Dr. Gutman noted that Assignor made subjective complaints of pain in the neck, lower back and left shoulder. Dr. Gutman's examination revealed full range of motion in the lumbar spine "with mild complaints of pain" and decreased range of motion in the left shoulder with anterior tenderness and multiple arthroscopy portals.

Dr. Gutman concluded that Assignor had sustained "strain" of the cervical and lumbar spine, which had "resolved," and "left shoulder arthroscopy surgery, well healed." Dr. Gutman opined that Assignor had no disability and that no further orthopedic treatment was necessary since Assignor had "achieved pre-accident status." Based on the IME findings, Respondent, by global denial dated February 12, 2019, terminated Assignor's benefits effective February 19, 2019.

In support of its claim, Applicant submitted the documents contained in the ADR Center including reports by Dr. Sebastian Lattuga, Cathia St. Jean, PA, Dr. Rene Hildebrand, Dr. William Jones and operative report. I was persuaded by the medical evidence that the office visits were warranted beyond the IME cut-off date of February 19, 2019.

According to Dr. Hildebrand's report dated January 11, 2019, which was contemporaneous with the IME, and the report dated February 22, 2019 about one month later, Assignor continued to present with both subjective and objective signs of injury to the neck, back and shoulder. Specifically, Dr. Hildebrand noted subjective complaints of radiating lower back pain into the lower extremities with tightness, tenderness and decreased lumbar range of motion. In addition, Assignor had positive straight leg raise test.

Dr. Hildebrand performed a nerve block injection to the lumbar spine on January 11, 2019, which had some benefit but due to Assignor's persistent complaints, she

recommended the discectomy on February 22, 2019. Dr. Jones' examination on March 18, 2019 noted similar findings. Dr. Jones noted that Assignor had conservative treatment consisting of physical therapy, chiropractic and acupuncture and had lumbar epidural steroid injection and nerve block injection without resolution of symptoms. Thus, Dr. Jones performed an endoscopic lumbar discectomy on March 18, 2019.

Dr. Lattuga's initial report dated May 6, 2019 continued to note ongoing subjective complaints of radiating neck and lower back pain with numbness and tingling. In addition, Assignor presented with decreased ranges of motion in the cervical and lumbar spine with decreased motor strength in the upper and lower extremities and decreased sensation at the left shoulder. Dr. Lattuga recommended continued therapy to address Assignor's ongoing symptoms. Dr. Lattuga's additional follow-up reports on June 18, 2019 and September 10, 2019 also revealed ongoing objective signs of injury that warranted treatment.

Thus, even if Dr. Gutman's IME report was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Gutman's assertion that Assignor needed no further treatment for his resolved injuries. *See A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11th Dist. 2006).

Moreover, the treating physicians' opinions should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the office visits performed from May 6, 2019 to September 10, 2019 in the amount of \$422.90.

Accordingly, Applicant is awarded \$422.90, the entirety of its claim.

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
	New York Spine Specialists	05/06/19 - 05/06/19	\$236.94	Awarded: \$236.94
	New York Spine Specialists	06/18/19 - 06/18/19	\$92.98	Awarded: \$92.98
	New York Spine Specialists	09/10/19 - 09/10/19	\$92.98	Awarded: \$92.98
Total			\$422.90	Awarded: \$422.90

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/31/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from August 31, 2019, the date of the request for arbitration, for that portion of the Claim awarded above (\$329.92); interest shall be computed and paid from December 10, 2019, the date of the amended request for arbitration, for that portion of the claim awarded above (\$92.98), all at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee of 20% of the claim awarded above plus interest 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 Nassau

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

03/07/2021
(Dated)

Robyn McAllister

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:
f3d95a4889ab26850b2665ec23129cf4

Electronically Signed

Your name: Robyn McAllister
Signed on: 03/07/2021