

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Accelerate Radiology PC d/b/a Precision  
Accelerad  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No.	17-20-1185-0121
Applicant's File No.	2475270
Insurer's Claim File No.	0592854129
NAIC No.	29688

**ARBITRATION AWARD**

I, Lori Ehrlich, 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: Claimant

1. Hearing(s) held on 04/06/2021  
Declared closed by the arbitrator on 04/06/2021

Evelyn Rodriguez, Esq. from Israel, Israel & Purdy LLP (NYC) participated for the Applicant

Omid Khani, Esq. from Law Offices Of Karen L. Lawrence participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 966.54**, 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's bill in the sum of \$966.54 for a left shoulder MRI performed on Applicant's assignor, X.C., a thirty-seven-year-old male, said claim arising from an automobile accident on July 8, 2020.

Respondent has denied this bill based on peer review and the issue presented is whether Respondent has proved that the testing in dispute was not medically necessary.

The parties appeared via Zoom.

I have reviewed the documents entered into the ADR by April 6, 2021.

#### 4. Findings, Conclusions, and Basis Therefor

The left shoulder MRI at issue was performed on Claimant on September 24, 2020. Applicant has set forth a prima facie case for each of the claims at issue by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784 NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11<sup>th</sup> Jud. Dusts.] Upon proof of a prima facie case by the Applicant, the burden now shifts to the insurer to prove that the services at issue were not medically necessary. (see Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

The bill at issue was denied based on the peer review of Dr. Julio Westerband who concluded that the testing at issue was not medically necessary. Dr. Westerband stated,

"The MRI was ordered within two months from DOA which is too early to determine whether the claimant was benefitting from conservative treatment or not. The symptoms were not severe either. Sensations and reflexes were normal, there was no significant tenderness, no positive orthopedic tests and no mechanical symptoms either. The ideal standard of care in this case was to continue with conservative treatment for at least three to six months and only then if the claimant did not improve, there would be a need for advanced diagnostic imaging". He notes that the Claimant had not even started receiving conservative treatment when the MRI tests were conducted.

Respondent has effectively rebutted the presumption of medical necessity established by the Applicant. The peer review submitted set forth sufficient factual foundations and medical rationale upon which his conclusions are based. As such, the burden shifts to the Applicant to refute the Respondent's evidence (see Expo Medical Supplies Inc. v. Claredon Ins. Co., 2006 NY Slip Op 50892(u).)

Applicant has submitted a rebuttal to the peer review from Dr. Siddharth Prakash who performed the testing at issue. Dr. Prakash reviewed the Claimant's medical records, examination, and treatment, noting that the Claimant was initially examined on September 21, 2020 by Dr. David Capiola, the referring physician", at which time the Claimant reported bilateral shoulder weakness, stiffness and pain rated 7/10 with difficulty lifting, carrying, overhead motion, pushing, pulling and ADLs.

Dr. Parkash states that despite Dr. Westerband conclusion that the left shoulder MRI was not medically necessary because the Claimant had not received sufficient conservative treatment and the Claimant's symptoms were worsening with treatment, given the Claimant's signs and symptoms, the MRI of the left shoulder was appropriate at the time it was ordered. Dr. Parkash cites to the New York Workers Compensation

Medical Treatment Guidelines, New York Shoulder Medical Treatment Guidelines, Third Edition (effective September 15, 2014) Section D.7.d.ii, which states that MRI testing should be considered after 4-6 weeks of non-operative conservative treatment, but it may be considered sooner (e.g. 1-2 weeks) when there is clinical suspicion of full rotator cuff tear. He contends that in the instant case, there was clinical suspicion of full rotator cuff tear, pointing out that the Claimant had had restricted range of motion with forward elevation to 110 degrees, abduction to 100 degrees, positive Hawkin's sign, positive Neer test, positive O'Brien's, positive Yergason's, and positive Speed's test, 1+ edema noted anteriorly and laterally, crepitus with forward elevation and rotator cuff/supraspinatus strength testing 4/5; all together indicative of possible full rotator cuff tear. He states that the Claimant was diagnosed with consequential left shoulder clinical rotator cuff/labral tear and the MRI was recommended to rule out rotator cuff/labral tear. Dr. Prakash states that the MRI was medically necessary to diagnose possible full rotator cuff tear and determine the proper course of treatment which included conservative management vs. corticosteroid injection vs. surgical intervention.

Upon careful review of the evidence presented, including Dr. Prakash's rebuttal and Dr. Capiola's examination, I find that Applicant has successfully addressed all of the issues raised by the peer reviewer and established that the left shoulder MRI was medically necessary. Accordingly, Applicant is awarded \$878.67. I note that Applicant billed \$966.54 pursuant to CPT code 73221, however the correct reimbursement for that CPT code in the New York State Workers' Compensation Fee Schedule is \$878.67.

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>Accelerate Radiology PC d/b/a Precision Accelerad</b>	<b>09/24/20 - 09/24/20</b>	<b>\$966.54</b>	<b>Awarded: \$878.67</b>
<b>Total</b>			<b>\$966.54</b>	<b>Awarded: \$878.67</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/12/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Insurer shall pay interest at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month. Interest shall be computed from November 12, 2020 to the date of payment.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00. However, for all arbitration requests filed on or after April 5, 2002, 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 Westchester

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

04/30/2021  
(Dated)

Lori Ehrlich

### **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:**  
438da68c7532009eb122399fcd960e9a

### **Electronically Signed**

Your name: Lori Ehrlich  
Signed on: 04/30/2021