

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Bensonhurst PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-20-1185-4088

Applicant's File No. ButtNu

Insurer's Claim File No. 0596906818
2QA

NAIC No. 19232

ARBITRATION AWARD

I, James Hogan, 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 08/05/2021
Declared closed by the arbitrator on 08/05/2021

James Errera from Dash Law Firm, P.C. participated in person for the Applicant

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

2. The amount claimed in the Arbitration Request, **\$ 1,453.16**, 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

The EIP, a 57 year old woman, was injured in a collision on 8/13/2020. This claim is for an MRI of the right hand and right shoulder administered to the EIP at the Applicant on 9/13/2020. Respondent denied the claim based upon a peer review by Peter Chiu, MD, who opined that the MRIs were not medically necessary. David T. Neuman, MD, has filed a rebuttal on behalf of the Applicant.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

Applicant's submission:

Applicant is billing for MRIs administered to the EIP on 9/13/2020. The MRIs were for the right shoulder and the right hand. They were prescribed by Timur Hanan, MD of Comprehensive Healthcare Medical, PC.

The total amount of the Applicant billing was \$1,453.16.

On 8/18/2020, the EIP had an initial consultation at Comprehensive Healthcare Medical, PC with Dr. Hanan.

She reported being involved in an MVA on 8/13/2020. She presented with complaints of pain in the neck rated 8/10 which was worse with neck flexion and extension. This pain radiated to the bilateral shoulders.

She also complained of numbness and tingling occasionally in the bilateral upper extremities and into the bilateral hands.

She complained of low back pain rated 8/10 which was worse with lifting and bending and prolonged standing/sitting. This pain radiated into the bilateral buttocks.

Her bilateral shoulder pain was also rated at 8/10 and was worse with overhead movements.

She also had pain in the 5th finger of the right hand. This was also rated at 8/10 and was painful upon flexion.

The EIP reported taking ibuprofen which was helping her mildly.

The report summarizes the accident of 8/13/2020. It is noted that the EIP did not seek medical attention immediately but later that day she went to the hospital but the emergency room was very full. She decided to leave before being seen due to Covid -19 and she was anxious that the emergency room was full of very sick people. Her symptoms continued; there was a lack of improvement. This prompted her to seek out Dr. Hanan.

The EIP denied any similar injuries prior to the accident.

Report indicates that the EIP was employed as a home health aide and has been working.

The Review of Systems was unremarkable.

The examination of the cervical spine found tenderness and spasm. Spurling's test was positive, bilaterally. Passive range of motion was painful and limited. Flexion was measured at 20/60; extension was 20/45; lateral flexion was measured at 20/45, bilaterally; rotation was measured at 30/80, bilaterally.

The examination of the lumbar spine found tenderness and spasm with limited and painful passive range of motion. Flexion was measured 30/90; extension was 5/30; right and left lateral extension were each 5/30; rotation was 5/30, bilaterally.

The examination of the extremities noted tenderness and limited range of motion in each shoulder.

Right shoulder range of motion was quantified as 90/180 in forward elevation; 90/180 in abduction; 5/30 in adduction; 20/80 in both internal and external rotation.

The range of motion for the left shoulder was measured at 100/180 in forward flexion; 90/180 in abduction; 5/30 in adduction; 20/80 in internal rotation and 40/80 in external rotation.

Hawkin's test was positive. Neer's test was positive.

The examination of the 5th finger of the right hand found tenderness and swelling and painful range of motion.

The neurological examination indicates that cranial nerves were intact. The EIP had an antalgic gait and was unable to walk on heels and toes.

Manual muscle testing was 4-/5 in the shoulders, right hand and hips.

DTRs were 1+. The sensory examination was inconsistent.

SLR was positive on both sides, at 45°.

The EIP's mental status was normal.

The examination of the head/scalp/face was normal without any tenderness being noted.

The examination of the eyes was normal and the examination of the skin/membranes was also normal.

The Diagnosis was: 1) strain of muscles, fascia and tendon at neck level; 2) strain of muscles/tendon of the rotator cuff of the left shoulder; 3) strain of muscles/tendon of the rotator cuff of the right shoulder; 4) strain of muscles, fascia and tendon of the lower back; 5) contusion of the right ring finger without damage to the nail; 6) sprain of ligaments of the thoracic spine.

The Assessment/Plan calls for the EIP to commence physical therapy at the rate of 3 times per week for a period of 4-6 weeks. This is to include physical medicine modalities as well as range of motion and strengthening exercises. A follow-up examination was scheduled for 2-3 weeks.

The EIP was advised to continue with the pain medication. MRIs were under consideration.

Dr. Hanan relates the EIP's injuries to the motor vehicle accident of 8/11/2020.

The EIP had a follow-up evaluation at Comprehensive Healthcare Medical, PC on 9/1/2020. This evaluation was done by John Moody, PA.

It is noted that the EIP continued to be complaining of pain in the neck, low back, bilateral shoulders and right 5th finger since the 8/13/2020 motor vehicle accident. Her pain was rated 8/10, throughout.

The cervical spine examination found tenderness and spasm. Spurling's test was positive, bilaterally. Passive range of motion was painful and limited.

Cervical flexion was measured at 30/60; extension was 20/45; right and left lateral flexion were each 20/45; right and left rotation were each 30/80.

As to the lumbar spine, the examination was consistent with tenderness and spasm with limited and painful range of motion.

Flexion was measured at 45/90; extension was 10/30; right and left lateral extension were each 5/30; right and left rotation were each 5/30.

The examination of the extremities notes bilateral shoulder tenderness and limited range of motion.

Right shoulder range of motion was measured at 100/180 in forward flexion; abduction was 90/180; adduction was 10/30; internal rotation and external rotation were each 20/80.

The range of motion of the left shoulder found forward elevation measured at 100/180; abduction was 100/180; adduction was 10/30; internal rotation was 20/80; external rotation was 40/80.

Hawkin's test was positive. Neer's test was positive.

As to the neurological examination, there were no focal deficits; cranial nerves were grossly intact. The EIP had an antalgic gait and was unable to walk on heels and toes. Manual muscle testing was 4-/5 in the shoulders, right hand and hips. DTRs were 1+. The sensory examination was inconsistent. SLR was positive, bilaterally at 45°.

The remainder of the examination was normal.

The Diagnosis was unchanged from the prior report.

The Assessment/Plan was to continue with physical therapy. Continue with pain medications - Flexeril and Mobix.

In addition, MRIs of the right hand and right shoulder to rule out ligament tears and rotator cuff tear.

The report indicates that the EIP was unable to work.

Applicant's submission contains a referral for the MRIs of the right shoulder and the right hand. This is dated 9/1/2020.

The EIP had a follow-up examination on 10/20/2020 with Dr. Hanan at Comprehensive Healthcare Medical, PC.

The EIP's neck pain was indicated 5/10 and radiated to the bilateral shoulders. Her low back pain was rated at 5/10; the bilateral shoulder pain was 7/10 and the right hand pain was 8/10.

There is a notation that the MRI of the right shoulder was consistent with internal derangement.

The MRI of the right hand was consistent with tendinitis.

I note that the range of motion for the cervical spine, lumbar spine and the bilateral shoulders is unchanged from the prior report.

The diagnosis is unchanged from the prior report.

The Treatment Plan calls for MRIs of the cervical spine and lumbar spine to rule out herniations.

Applicant has provided a copy of the MRI report for the right hand of the EIP. Also provided is a copy of the MRI report for the EIP's right shoulder. Both of these were administered on 9/13/2020.

Respondent's submission:

Respondent's position is that the Applicant's claim was properly denied based upon a peer review by Peter Chiu, MD, who determined that the MRIs at issue were not medically necessary.

Peer Review:

Peter Chiu, MD, PMR, did a peer review on 10/6/2020. The purpose of the peer review was to determine the medical necessity for the MRI testing of the right hand and the right shoulder performed on 9/30/2020 at the Applicant and billed at \$1,453.16.

There is a list of medical records that were reviewed. These include the 8/18/2020 evaluation of the EIP by Dr. Hanan.

As per his Summary Assessment, Dr. Chiu says that after reviewing medical records he finds them sufficient for him to arrive at the conclusion that the MRI testing of the right-hand and right shoulder at issue were not medically necessary.

He notes that the EIP was involved in an MVA on 8/13/20. She did not go to the hospital for an evaluation. There was no hospital admission, fracture or instability noted.

He opines that since the EIP did not require an ER visit it indicates that the impact was low.

He then summarizes the content of the initial evaluation of the EIP dated 8/18/20 by Dr. Hanan. He notes that this evaluation was performed within 8 weeks of the accident.

He also opines that the neurological findings were "non-specific." It normally takes many weeks or months for true objective neurological deficits to manifest on physical exam findings which was not the case for this claimant.

He also opines that the history, subjective complaints and physical examination findings were consistent with a sprain/strain injury of the spine and a contusion/strain of the extremities which would not warrant the MRI testing for the claimant at the time it was performed. She was recommended for medication, MRI testing and physical therapy.

He goes on to say that it is unclear how the MRI testing at issue would alter the treatment plan as there was no indication that the claimant was a candidate for surgery or joint injection at that time. Additionally, the MRIs were done with less than 6 weeks of conservative (physical therapy) treatment which would not be the standard of care.

Dr. Chiu then appears to have lifted a section from the American College of Radiology Appropriateness Criteria for "Shoulder Pain - Traumatic" which was last reviewed in 2017. This was uploaded in his discussion for the MRI testing of the right shoulder.

This section discusses the standard of care which includes radiographs. It also discusses the different types of shoulder injuries and how MRIs are best utilized for those conditions.

At the conclusion of that paragraph Dr. Chiu has written a "Note" saying that the claimant had a whiplash (sprain/strain; contusion/strain) injury which would not require this type of imaging test as being causally related (e.g. fracture, acute ligamentous/labral tear; tumor; dislocation, invasive/surgical intervention; etc.) to this incident; hence there was no medical necessity for the test.

As to his discussion regarding the MRI of the right hand, he again lifted a section from the American College of Radiology: Appropriateness Criteria, "Acute Hand and Wrist Trauma" last reviewed in 2013.

At the end of that paragraph he also provides a "Note" "The claimant had a whiplash (sprain/strain; contusion/strain) injury which would not require this type of imaging test as being causally related (eg. Fracture, dislocation, subluxation; invasive/surgical intervention; etc.) to this incident; hence, there is no medical necessity for this test."

He concludes that the MRIs at issue were not medically necessary.

On 10/16/2020, Respondent issued an NF-10, denying the Applicant's claim based upon the peer review by Dr. Chiu.

Respondent has provided a copy of the medical records listed in the peer review report.

It has not provided a copy of the articles relied upon by Dr. Chiu in his peer review. While this is not a fatal error, it does have a negative impact upon the weight of the peer review.

Applicant's rebuttal to peer review: David T. Neuman, MD, has filed a rebuttal to the peer review.

He summarizes the issues and lists a number of documents that he has reviewed. These include the initial evaluation of the EIP by Dr. Hanan on 8/18/2020 and the follow-up examination dated 9/1/2020.

He summarizes the 8/18/2020 evaluation of the EIP and notes that thereafter she was started on a full course of physical therapy. Her condition failed to resolve.

The EIP was re-evaluated on 9/1/2020. At that time, she still complained of persistent neck pain radiating into the shoulder and hand with numbness and tingling sensation; 8/10 right shoulder pain that was worse with overhead movements; right 5th finger pain that was painful to flex.

The examination findings are summarized including positive orthopedic testing for the shoulders.

As a result of the examination, the patient was recommended to continue physical therapy and pain medications. She was to follow-up in 4 weeks. She was also referred for an MRI of the right hand and right shoulder to rule out a ligament tear and a rotator cuff tear.

The EIP continued with ongoing conservative treatment and had the MRIs at issue on 9/13/2020, almost 2 weeks after the follow-up evaluation.

Dr. Neuman recites the findings of the MRI of the right hand and the MRI of the right shoulder.

"Based upon a review of the aforementioned documents, taking into consideration the patient's history, the history of the injury, the patient's complaints, the clinical findings and a review of the medical history, and in accordance with the generally accepted standards of care in the relevant medical community, the MRI studies of the right-hand and right shoulder performed on 9/13/2020 were medically necessary, within a reasonable degree of medical certainty."

He notes that Dr. Chiu denied the medical necessity for the MRIs based upon the conclusions set forth in his peer review report.

In that report he said that it was unclear how the MRI testing of the right shoulder and right hand would alter the treatment as there was no indication that the claimant was a candidate for surgery or epidural steroid injections at that time.

Dr. Neuman says that Dr. Hanan recommended the MRI studies of the right-hand and right shoulder to rule out a ligament tear and a rotator cuff tear. Those reasons for the referral establish that the results of the MRIs would identify the non-improving right shoulder and right hand symptoms. In such cases, it is obvious that the treating physician had plans to alter the treatment plan based upon the MRI results.

He also says that it is virtually impossible to foresee or plan how the results of diagnostic test will be used prior to the inspection and interpretation of the results. Once the results have been analyzed, they are then used in conjunction with other collected data such as examinations and treatment notes as well as other diagnostic testing to explore whether continuation, modification or termination of treatment is required. Additionally, regardless of whether the treating or testing physician explicitly lists how exactly the test results will be used, the fact is that the patient's complaints, the history and the findings on examination justified the MRI testing performed and the results can be beneficial for determining and confirming the diagnosis, the extent of treatment and the prognosis.

He also opines that any argument that the results of the testing would not alter the treatment plan of the patient ignores the reality that clinical physicians base their assessment, prognosis and treatment plan on the information obtained both in the clinical evaluations and in diagnostic testing obtained. It is neither required nor standard to specifically record on a report why a particular test was performed or how the test results will affect the treatment of the patient.

Dr. Neuman then discusses the MRI of the right hand and notes that as per Dr. Chiu, for most patients with trauma to the hand, wrist or both, radiographs provide adequate diagnostic information and guidance for the treating physician.

It should be noted that while performing plain film radiography is useful as a 1st course of diagnostic testing, it is limited in the evaluation of extent of soft tissue injuries.

Moreover, plain film which is negative for fracture should not lead the clinician to stop there.

Further, a CT is not optimal for the evaluation of soft tissue, tendons and ligaments. In support of that statement, he refers to an April, 2010 article from UPTODATE.COM. Even when initial x-rays of the wrist/hand are negative for fracture or other significant abnormalities, and initial examination does not reveal instability of the hand, persistent or worsening pain needs to be carefully evaluated and may warrant MRI in patients even shortly after a traumatic event.

Additionally, a hand sprain/contusion is an inaccurate diagnosis. In 4/5 patients with normal x-rays, MRI identified pathologic findings and a very large variety of injuries in different structures. It is suggested that wrist/hand sprain should be defined as "a cold partial or complete soft tissue (ligament, tendon, muscle) or bone injury in relation to a trauma with negative x-ray." The MRI findings led to a more differentiated treatment in more than 1/3 of patients. It is recommended that MRI should be considered as part of an early investigation especially when the hand does not settle within the 1st couple of weeks.

Dr. Chiu also said that the claimant had a whiplash injury which should not require that the imaging study as being causally related to this incident.

As per Dr. Neuman, as evident from the medical records, the claimant sustained injury to the right 5th finger as a result of the accident of record. Therefore, the MRI of the right hand was done to explore the biological component of the finger pain. It was done to visualize potential damage to the finger. It was also noted that the EIP had multiple positive findings including right 5th finger pain, pain upon flexion, painful range of motion, tenderness and swelling as well as diminished muscle strength and DTRs in the right hand. These conditions were documented in Dr. Hanan's report.

Dr. Neuman notes that as per the ACR guidelines, acute trauma is one of the indicators for the performance of an MRI for the wrist.

He goes on to argue the medical necessity for the MRI of the hand.

He then turns his attention to the medical necessity for the MRI of the right shoulder. Again he refers to the statement of Dr. Chu that the etiology of traumatic shoulder pain can often be made based upon a clinical examination, radiographs and the mechanics of injury.

Dr. Neuman argues the other reasons to do an MRI of the shoulder and refers to the ACR Appropriateness Guidelines for MRI of the Shoulder after Trauma.

He again discusses the limitations of x-rays and CT.

He also discusses the findings in the records and how they form a basis for describing the MRI of the shoulder.

He lists a number of indicators for MRIs of the shoulder as per the ACR Practice Guidelines for the Performance and Interpretation of Magnetic Resonance Imaging of the Shoulder.

He continues to argue in favor of the MRIs and refers to other authoritative sources to support his position.

At the hearing:

Applicant argued that Dr. Chiu's report was insufficient to shift the burden. He did not recite the standard of care.

The sources relied upon discuss various methods of imaging and there was no correlation to the EIP's physical condition.

The physical exams indicated positive orthopedic testing, therefore, Dr. Chiu's opinion that the EIP had sprain/strain type injuries is not supported by the records.

Additionally, Dr. Chiu opined that this was a low impact accident. The basis for this opinion was that the EIP did not go to the Emergency Room. However, the records reflect that she did go to the Emergency Room, but it was crowded and she was concerned about Covid, therefore, she left.

Applicant also relied upon the rebuttal.

Respondent relied upon the peer review and opined that the EIP suffered soft tissue injuries.

FINDINGS:

The Applicant has established its prima facie case.

This claim is for an MRI of the right hand and right shoulder administered to the EIP at the Applicant on 9/13/2020. Applicant billed a total of \$1,453.16.

Respondent denied the claim based upon a peer review by Peter Chiu, MD, who opined that the MRIs were not medically necessary.

David T. Neuman, MD, has filed a rebuttal on behalf of the Applicant.

The purpose of a peer review is to determine whether the service/test provided was medically necessary. The peer reviewer discusses the standard of care in the medical community and offers his/her opinion as to why the service/test at issue falls outside of that standard of care. The peer reviewer buttresses his/her opinion with authoritative texts, treatises and articles, generally from peer-reviewed publications.

Some peer reviewers rely upon "guidelines" as a basis for denying a claim. Some "guidelines" are appropriate, while others are not. An example of a "guideline" that is not appropriate in dealing with New York No-fault, is one generated by a healthcare management entity, such as Apollo, who has promulgated a list of DME and has made a determination as to whether or not prescribing these items was medically necessary. This is simply a determination by an insurance entity, in conjunction with its advisors, in determining which devices it chooses to pay for.

In reviewing the peer review by Dr. Chiu, I note that he reviewed the 8/18/2020 evaluation of the EIP by Dr. Hanan. He did not review the follow-up examination that was done on 9/1/2020. It was as a result of the 9/1/2020 evaluation that the MRIs were prescribed. There were prescribed by John Moody, PA.

Dr. Chiu also says that the EIP was recommended for MRI testing as a result of the 8/18/20 evaluation by Dr. Hanan. This is not reflected in the records. On that report Dr. Hanan simply says MRIs would be considered. Therefore, Dr. Chiu is basing his opinion on an incomplete record and his misinterpretation of the 8/18/20 evaluation report.

Applicant has submitted a rebuttal to the peer review by Dr. Neuman who refers to sections of the peer review report and argues why the MRIs at issue were medically necessary.

I note that both Dr. Chiu and Dr. Neuman referred to the ACR Appropriateness Criteria in forming their opinion that the MRIs were either necessary or not necessary.

Dr. Chiu does not refer to any other authoritative sources to support his argument while Dr. Neuman does reference other sources in support of his argument.

After reviewing the documentation contained in the file and listening to the arguments of the parties at the hearing, I find that the peer review by Dr. Chiu was insufficient and lacking because his opinion was based upon an incomplete record - as noted above, he did not review the follow-up evaluation of the EIP.

Additionally, the rebuttal by Dr. Neuman is more comprehensive.

The claim is awarded.

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
	Stand Up MRI of Bensonhurst PC	09/13/20 - 09/13/20	\$1,453.16	Awarded: \$1,453.16
Total			\$1,453.16	Awarded: \$1,453.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/17/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 11/17/2020 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor.

C. Attorney's Fees

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

The insurer shall pay the Applicant's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 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 Suffolk

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

08/05/2021

(Dated)

James Hogan

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:
848fe64d36818482f97daf15daf5a540

Electronically Signed

Your name: James Hogan
Signed on: 08/05/2021