

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mount Hollis Medical PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-21-1207-7526

Applicant's File No. 85176

Insurer's Claim File No. 0588304436

NAIC No. 29688

### ARBITRATION AWARD

I, Preeti Priya, 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 [SG]

1. Hearing(s) held on 05/04/2022  
Declared closed by the arbitrator on 05/04/2022

Robert Cippitelli, Esq., from Law Offices of Eitan Dagan (Elmhurst) participated for the Applicant

Lauren Piacentini, Esq., from Law Offices Of Karen L. Lawrence participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,236.38**, 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 disputes arise from the underlying automobile accident of May 26, 2020 in which the Assignor, a 22 year old male, was a driver. The issues in this matter are: Whether Applicant established entitlement to No-Fault compensation for office visit and physical therapy provided to Assignor;

Whether Respondent made out a prima facie case of lack of medical necessity and, if so, whether Applicant rebutted it.

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

At the hearing held virtually via Zoom, Applicant was represented by Robert Cippitelli, Esq., who presented oral arguments and relied upon documentary submissions. Lauren Piacentini, Esq., representing Respondent, presented oral arguments and relied upon documentary submissions. I have reviewed the submissions contained in the American Arbitration Association's ADR Center. These submissions are the record in this case.

Assignor sought private medical attention and was evaluated by Max Jean Gilles, MD, on June 1, 2020. Assignor received conservative care including physical therapy. Assignor also underwent diagnostic tests. Applicant submitted the claims for office visit and physical therapy provided between March 26 and April 20, 2021, to Respondent; payment was denied.

After reviewing the records, I find that Applicant established its prima facie case of entitlement to No-Fault compensation. See Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Since Respondent's denials were timely, it was within its rights to assert that further treatment was medically unnecessary. See Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co., 2002 NY Slip Op 40420(U), 2002 WL 31108069 (App. Term 2d & 11th Dists. June 27, 2002); Country-Wide Insurance Co. v. Zablocki, 257 A.D.2d 506, 684 N.Y.S.2d 229 (1st Dept. 1999).

The claims were denied based on an independent medical examination conducted on November 4, 2020, by Ernesto Seidman, MD, at Respondent's request. Based on the examination and the report, no-fault benefits were terminated on November 25, 2020. He reviewed medical records including evaluation reports, progress notes and diagnostic test results. He then outlined the Assignor's treatment and medical history as it related to the accident. Dr. Seidman opined that Assignor did not need any further physical therapy and orthopedic follow up.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008). If he does so, it becomes incumbent on the claimant to rebut the IME review, see AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), 2009 NY Slip Op 50208(U), 2009 WL 323421 (App. Term 2d & 11th Dist. Feb. 9, 2002), because the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Shtarkman v. Allstate Insurance Co., 2002 NY Slip Op 50568(U), 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance company). The insured or the provider bears the burden of persuasion on the question of medical necessity. Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 NY Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). This burden of proof is properly placed on a claimant health care provider because presumably it is in possession of the injured party's medical records.

Applicant submitted a rebuttal by William King, MD, addressing the IME report. Applicant also relies upon follow up evaluations after the IME examination to refute the findings of the IME doctors. Dr. King stated "As evident from this patient's medical records and Dr. Seldman's IME, it is very clear that the patient was symptomatic at the time of IME. In such instances, it is highly possible that the patient's symptoms exacerbate later particularly as the IME report acknowledges certain positive complaints such as pain in the neck, right shoulder, and lower back." He also stated "Though the IME physician noted all normal findings; the post-IME medical records clearly show that the patient's condition was not resolved at the time of IME. The patient had continued complaints of pain in the neck, lower back, and right shoulder with stiffness, moderately restricted range of motion, moderate pain upon palpation of the spinous process, moderate paraspinal muscle spasm, and tenderness." Dr. King in a detailed Rebuttal, systematically addresses the IME report and discusses Assignor's need for further treatment. Applicant has offered evidence sufficient to rebut Dr. Seldman's findings and conclusion.

Applicant has rebutted Respondent's defense and has sustained Applicant's burden of proof by a preponderance of credible evidence regarding medical necessity of further services. Applicant's 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
	Mount Hollis Medical PC	03/26/21 - 04/20/21	\$1,236.38	Awarded: \$1,236.38
<b>Total</b>			<b>\$1,236.38</b>	<b>Awarded: \$1,236.38</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 06/14/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant's award shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30-day month from the date payment became overdue to the date of the payment of the award pursuant to 11 NYCRR 65-3.9 (a). The end date for the calculation of the period of interest shall be the date of payment of the claim. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.")

C. Attorney's Fees

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

Respondent shall pay Applicant a separate attorney's fee, in accordance with 11 NYCRR 65-4.6(d). Since the within arbitration request was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, 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 New York

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

05/12/2022  
(Dated)

Preeti Priya

**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:**  
25d632141f0a6212280f77d8c74e427b

**Electronically Signed**

Your name: Preeti Priya  
Signed on: 05/12/2022