

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Wensong LI Medicine PC  
(Applicant)

- and -

MVAIC  
(Respondent)

AAA Case No. 17-21-1216-4943

Applicant's File No. 2638328

Insurer's Claim File No. 644560

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Pauline Molesso, 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 06/28/2022  
Declared closed by the arbitrator on 06/28/2022

Scott Fisher from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Jeffrey Kadushin from Marshall & Marshall, Esqs. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$653.76**, 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 Assignor was a 37 year old male who was a bicyclist involved in a motor vehicle accident on 11/23/20. Thereafter, the Assignor sought medical treatment. Applicant seeks reimbursement for an office visit and injection treatment, performed on 6/15/21 and 7/6/21, totaling \$653.76 in dispute. Respondent denied the claim based on a lack of medical necessity, relying on the IME report of Dr. Roth, dated 5/13/21.

4. Findings, Conclusions, and Basis Therefor

This case was conducted using the documents submitted by the parties in the ADR Center, maintained by the American Arbitration Association, and the oral arguments of the parties. Any documents in the ADR Center are hereby incorporated into this hearing. I have reviewed all the relevant documents. No witnesses testified at this hearing.

An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. Ying Eastern Acupuncture, P.C. v. Global Liberty Ins., 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008). If the IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002), as the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994).

Respondent relies on the IME report of Dr. Roth, held 5/13/21. At the time of the IME, the Assignor complained of pain in the bilateral shoulders, left elbow, left hand and left knee. Upon examination, range of motion tested was within normal limits and orthopedic testing negative. Dr. Roth diagnosed all injuries as resolved and opined further treatment was not medically necessary.

In opposition, Applicant relies on the Assignor's medical records. The Assignor was seen on 6/15/21 with complaints of radiating neck pain to both shoulders. The examination revealed C5-7 midline and paraspinal area tenderness mild-moderate level. Cervical spine range of motion showed bilateral mild-moderate limited due to the pain. The lumbar spine also demonstrated midline tenderness and slight range of motion limited. The diagnosis included spinal stenosis, radiculopathy and cervicgia. Further treatment was recommended. The Assignor was seen on 7/6/21 for injection treatment to the cervical spine. Additional submitted examinations document complaints of pain and positive findings.

Based on a totality of the evidence, I find in favor of the Applicant. The medical records submitted sufficiently demonstrate the need for continued treatment beyond the IME's effective date. The claim is granted. No evidence was presented regarding the fee schedule.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of hearing.

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
	Wensong LI Medicine PC	06/15/21 - 06/15/21	\$127.41	Awarded: \$127.41
	Wensong LI Medicine PC	07/06/21 - 07/06/21	\$526.35	Awarded: \$526.35
Total			\$653.76	Awarded: \$653.76

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/24/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the

particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

Based on the regulations, the date that interest shall accrue from is the date the Applicant requested arbitration (the date the AR-1 is received). See, 11 NYCRR 65-3.9(c).

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 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 Nassau

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

06/29/2022  
(Dated)

Pauline Molesso

**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:**  
4a6588419645947621f22f7ddf223c30

### **Electronically Signed**

Your name: Pauline Molesso  
Signed on: 06/29/2022