

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-23-1302-6834
- and -	Applicant's File No.	na
Allstate Fire & Casualty Insurance Company	Insurer's Claim File No.	0679305334
(Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Alina Shafranov, 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 10/18/2023, 12/06/2023
Declared closed by the arbitrator on 12/06/2023

Myrna L. Archer, Esq. from Myrna L Archer Esq. participated virtually for the Applicant

Meghan McDonough, Esq. from Law Offices of John Tropic participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,968.56**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

At the hearing the parties stipulated that the Applicant has standing to collect on this claim, as well as to the fact that the bill is proper as per the New York State Workers' Compensation Medical Fee Schedule.

3. Summary of Issues in Dispute

Applicant, "NSB" a 33-year-old female was involved in a motor vehicle accident as a passenger on August 1, 2022. The Applicant sought treatment for her injuries sustained in the MVA, and eventually came under the care of Philip M. Rafiy, M.D. who performed a left shoulder arthroscopic surgery with extensive glenoid labral

debridement. The Applicant seeks reimbursement for the surgery which was performed on 6/29/23. Respondent timely denied reimbursement for the claim based upon an Independent Medical Examination (IME) by Dana A. Mannor, M.D. performed on 2/16/23. This is a non-assignee case, wherein the Applicant is seeking reimbursement from Respondent for monies already paid to Philip M. Rafiy, M.D, following settlement from her third-party accident case. The Applicant has provided proof of payment in the form of a cancelled check from her counsel's Iola Trust Account, made out to Dr. Philip M. Rafiy in the amount of \$4968.56. At the hearing the parties stipulated that the Applicant has standing to collect on this claim, as well as to the fact that the bill is proper as per the New York State Workers' Compensation Medical Fee Schedule. Therefore, the only issue to be decided is whether the services provided after the IME cut-off date were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008).

In support of its contention that continuing orthopedic treatment was not medically necessary, Respondent relies upon the IME by Dana A. Mannor, M.D. performed on 2/16/23. The physical examination was normal. All ranges of motion were within normal limits, and the orthopedic and neurological testing was negative. Dr. Mannor diagnosed the Assignor's injuries as resolved and opined that no further orthopedic treatment was medically necessary.

I find that the examination report of Dr. Mannor presents a factually sufficient cogent medical rational in support of Respondent's lack of medical necessity defense. Dr. Scarpinato did not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

To rebut the IME of Dr. Mannor, Applicant relies on numerous medical records. I am convinced that the IME Report of Dr. Mannor has been adequately refuted by the evidence collectively. The medical examination of the Assignor by Dr. Rafiy on May 1, 2023, revealed decreased ranges of motion in the cervical and lumbar spine and left shoulder, as well as positive O'Brians' test, positive apprehension, positive impingement, positive cross arm test, and decreased sensation. The MRI testing performed on August 26, 2022, revealed left shoulder internal derangement with rotator cuff tear. The Assignor also underwent arthroscopic surgery of the left shoulder on June 29, 2023. These medical records note numerous positive objective findings and are sufficiently contemporaneous to the IME. Therefore, I find that the medical records submitted are sufficiently contemporaneous and comprehensive to establish that the Assignor was in need of continued orthopedic care beyond the benefits cut-off date based on the IME of Dr. Mannor. The Assignor continued to report subjective complaints, and the objective exam findings confirmed that continued orthopedic treatment was warranted beyond the cutoff of benefits.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant in the amount of \$4968.56.

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
	Neon Shari Bartley	06/29/23 - 06/29/23	\$4,968.56	Awarded: \$4,968.56
Total			\$4,968.56	Awarded: \$4,968.56

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/07/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until October 18, 2023, the date that interest was stayed at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed **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 newly promulgated 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 NY
SS :
County of New York

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

12/09/2023
(Dated)

Alina Shafranov

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:
c18703525ae54e9832f187906c1b2caf

Electronically Signed

Your name: Alina Shafranov
Signed on: 12/09/2023