

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

South Shore University Hospital
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-22-1280-1549

Applicant's File No. RFA22-312703

Insurer's Claim File No. 0604867887 2JH

NAIC No. 19232

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person (LM)

1. Hearing(s) held on 12/06/2023
Declared closed by the arbitrator on 12/06/2023

Helen Feingersh from The Russell Friedman Law Group LLP participated virtually for the Applicant

Dana Nolan from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$162.26**, 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

Applicant seeks reimbursement for fluoroscopic guidance (77003) and medications (J1030 and J2001) as the technical component of the lumbar ESI performed on 7/5/22 on the EIP, a 42 year old female driver following a motor vehicle accident on 10/24/20. The charges were timely denied based on an IME by Dr. John Waller on 12/27/21. Further benefits were denied effective 1/14/22. A general denial was issued on 12/31/21.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for fluoroscopic guidance (77003) and medications (J1030 and J2001) as the technical component of the lumbar ESI performed on 7/5/22 on the EIP, a 42 year old female driver following a motor vehicle accident on 10/24/20. The charges were timely denied based on an IME by Dr. John Waller on 12/27/21. Further benefits were denied effective 1/14/22. A general denial was issued on 12/31/21.

Dr. Waller notes the EIP was a 42 year old female driver not treated emergently who was undergoing conservative treatment for low back and hip pain. She was a corrections officer who did not lose time from work. She notably receiving injections to the hip which helped. Gait and movements were normal and unguarded. The cervical, thoracic and lumbar spine exam findings were normal including ranges of motion, orthopedic and neurologic testing. There was no spasm or tenderness. The exam of the shoulders, elbows, wrists/hands, hips, knees and ankles/feet was also entirely negative except the left hip exam noted tenderness. Lumbar sprain/strains were deemed resolved and left hip sprain/strain was resolved with minimal evidence of trochanteric bursitis. Further treatment was deemed unnecessary.

I find the IME detailed and comprehensive and adequately establishes lack of medical necessity for further therapy shifting the burden to applicant.

There is a report dated 3/9/22 which is after the lumbar epidural injection which is a follow up on left lateral hip pain with complete resolution with cortisone injection 3 months prior with pain recurrence 3 weeks prior. It was noted she had underlying rheumatoid arthritis. On exam there was left hip tenderness, pain with internal rotation, pain and weakness on resisted abduction and internal rotation and positive Ober's and Fabre's tests. Antalgic gait referable to the left hip was noted. Another cortisone injection was performed and yet another on 6/7/22.

There is a 3/1/21 exam which was a follow up for lumbar radiculitis/radiculopathy and another lumbar epidural injection performed on 2/25/21, about a year before the ESI at issue.

I find the records rebut the IME and indicate an ongoing condition in the lumbar spine for which additional treatment was medically necessary.

Even if the patient was improved and normal appearing at the IME, three months later she was asymptomatic and required a repeat ESI. The lumbar MRI showed a scoliosis and lumbar herniation with bulging discs around the level of herniation.

In linked case 17-22-1250-8703 the same fee schedule issue arose for a facility fee another ESI for this patient and the coder found the fluoroscopic guidance and medications were included in the facility fee as code 77003 has an EAPG of 474 and per the NCCI Edits is included in 62323 and the medications are ancillary and not entitled to reimbursement.

The charges are denied.

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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of FL

SS :

County of Osceola

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

12/10/2023
(Dated)

Camille Nieves

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:
c202999ba0b5c992576ff1b02e94fca8

Electronically Signed

Your name: Camille Nieves
Signed on: 12/10/2023