

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Joseph A Raia MD PC
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-23-1287-9580

Applicant's File No. DK22-314703

Insurer's Claim File No. 228025809

NAIC No. Self-Insured

ARBITRATION AWARD

I, Eylan Schulman, 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 12/08/2023
Declared closed by the arbitrator on 12/08/2023

Evan Polansky, Esq., from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Kerianne Keller, Esq., from Avis Budget Group participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,600.42**, 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

Whether upper and lower extremity EMG/NCV testing was medically necessary.

The EIP was a 29-year-old female who was the seat-belted passenger of a vehicle involved in an automobile accident on July 17, 2022. This is a claim for reimbursement for upper and lower extremity EMG/NCV testing performed on August 23, 2022.

Respondent denied the claim based on lack of medical necessity. Specifically, Respondent denied the claim for EMG/NCV testing based on the peer review of internist Shruti Patel, M.D., dated September 15, 2022.

4. Findings, Conclusions, and Basis Therefor

The findings herein are based on documentary evidence set forth in the ADR Center submitted by the parties prior to the date of hearing and oral argument at the hearing.

It is undisputed that Applicant established its *prima facie* case of entitlement to first-party no-fault benefits by demonstrating it submitted a timely claim setting forth the fact and amount of loss sustained and payment for the claim has not been made.

Respondent attempts to meet its burden to establish lack of medical necessity for the upper and lower extremity EMG/NCV testing at issue through the peer review of internal medicine doctor Shruti Patel, M.D., dated September 15, 2022. Dr. Patel claims EMG/NCV testing is unnecessary when the diagnosis of radiculopathy can be made with other clinical information, such as MRI results, physical exam findings, and the presence of radiating symptoms. Based on a review of the EIP's medical records, Dr. Patel argues it did not seem as though the EIP presented any radicular symptoms. Dr. Patel asserts that based on the clinical information provided, there was no true differential diagnosis to be pursued, meaning the EMG/NCV testing would not have changed the course of treatment, rendering the EMG/NCV testing unnecessary.

In response to the peer review, Applicant provides a rebuttal from Igor Zilberman, FNP, the EIP's treating provider. Mr. Zilberman asserts that neurological damage was suspected in the EIP, and given the limitations of clinical and radiological evaluation in diagnosing this damage, EMG/NCV testing was necessary in order to elucidate the status of the EIP's neurological health.

After review of the medical records included on the ADR Center and consideration of the arguments advanced by counsel for both parties, assuming Respondent met its burden to establish lack of medical necessity for the EMG/NCV testing at issue, I find that Applicant met its burden in rebuttal. Given the EIP's treating provider's recommendation for the EIP to undergo the EMG/NCV testing at issue, I defer the treating provider's determination that the testing was necessary for the EIP's rehabilitation following the accident.

Based on the foregoing, Applicant is awarded the claim, in the amount of \$1600.42, representing claimed amount for the testing at issue and proper rate of reimbursement under the Fee Schedule, in full resolution of the claim.

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
	Joseph A Raia MD PC	08/23/22 - 08/23/22	\$1,600.42	Awarded: \$1,600.42
Total			\$1,600.42	Awarded: \$1,600.42

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/23/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. (11 NYCRR 65-3.9(c)). The end date for the calculation of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. (11 NYCRR 65-3.9(a)).

C. Attorney's Fees

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

For cases filed prior to February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to a minimum of \$60 and a maximum of \$850. For cases filed on or after February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to no minimum and a maximum of \$1360. (11 NYCRR 65-4).

- 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 Nassau

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

12/17/2023
(Dated)

Eylan Schulman

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:
1a2f402a9b87604c5540882349d545e1

Electronically Signed

Your name: Eylan Schulman
Signed on: 12/17/2023