

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lenox Hill Radiology & Medical Imaging
Associates PC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No.	17-23-1300-7597
Applicant's File No.	CF13024648
Insurer's Claim File No.	99110-06
NAIC No.	24309

ARBITRATION AWARD

I, Joshua Adler, 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 12/12/2023
Declared closed by the arbitrator on 12/12/2023

T.M. Franzoni from Choudhry & Franzoni, PLLC participated virtually for the Applicant

C. Fingerhut from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,937.44**, was AMENDED and permitted by the arbitrator at the oral hearing.

As amended, applicant seeks \$2695.52 (shoulder MRI @ 966.54, cervical MRI @ 725.78, lumbar MRI @ 1003.20).

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP claimed injuries arising from a 7/22/22 MVA.

Applicant seeks payment for MRIs of EIP's shoulder, lumbar spine and cervical spine (DOS 11/15/22 and 11/17/22).

Relying on a peer review dated 5/08/23 by Douglas Petrowski, MD, respondent asserts the MRIs were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

EIP: female, born October 1969, initials N.M.

I have reviewed the MODRIA file maintained by the AAA. The findings set out below are based on documents in MODRIA and arguments made at the hearing.

The EIP claimed injuries arising from a 7/22/22 MVA.

Applicant seeks payment for MRIs of EIP's shoulder, lumbar spine and cervical spine (DOS 11/15/22 and 11/17/22).

Relying on a peer review dated 5/08/23 by Douglas Petrowski, MD, respondent asserts the MRIs were not medically necessary.

At the threshold, I note the services rendered are presumptively medically necessary, as the applicant established its *prima facie* entitlement to payment by submitting the claim, setting forth the fact and the amount of loss sustained, and showing that payment was overdue (see e.g., Mary Immaculate Hospital v Allstate Insurance Co., 5 AD3d 742 [2d Dept. 2004]). Indeed, in no-fault matters, "medical necessity is established in the first instance by proof of submission of the claim form" (All County Open MRI v Travelers Insurance Co., 11 Misc3d 131 [A], 815 NYS2d 493 [App. Term 2006]). Turning to the peer review, I find it insufficient to overcome the presumption of medical necessity, as discussed below.

As discussed at the hearing, although respondent offers the peer review to invalidate all the MRIs - as discussed at the hearing - it addressed only the shoulder MRI. Thus, no argument or evidence was proffered to support invalidating the spinal MRIs. Further, the peer reviewer's challenge to the shoulder MRI was also unavailing. In essence, the peer reviewer stated that the subject shoulder MRI in November 2022 was not necessary because shoulder surgery the following month was not based on causally-related medical necessity. That assertion is not backed up by specific references to the medical record, and was conclusory. The presumption of medical necessity which attached with transmission of the invoice has not been refuted.

Accordingly, I find for the applicant.

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	Amount Amended	Status
	Lenox Hill Radiology & Medical Imaging Associates PC	11/15/22 - 11/17/22	\$2,937.44	\$2,695.52	Awarded: \$2,695.52
Total			\$2,937.44		Awarded: \$2,695.52

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/23/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the applicant interest computed from 5/23/23, the date on which the AR-1 was first received by the American Arbitration Association, at a rate of 2% per

month, simple, and ending with the date of the payment of the award, subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

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

This matter was filed with the AAA after February 4, 2015. Thus, 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 NY

SS :

County of Nassau

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

12/20/2023

(Dated)

Joshua Adler

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:
cfe959b44f4199f6833874d56c688a8b

Electronically Signed

Your name: Joshua Adler
Signed on: 12/20/2023