

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 -

Palisades Insurance Company  
(Respondent)

|                          |                  |
|--------------------------|------------------|
| AAA Case No.             | 17-23-1300-5051  |
| Applicant's File No.     | CF13024609       |
| Insurer's Claim File No. | 805402232154-002 |
| NAIC No.                 | 10791            |

**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. Hall from Law Office of William J. Fitzula participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$966.54**, 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 EIP claimed injuries arising from a 2/18/23 MVA.

Applicant seeks payment for a left shoulder MRI performed on 3/06/23.

Relying on a peer review by Howard Levy, MD, dated 4/12/23, respondent asserts the MRI was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

EIP: male, born January 1991, initials D.D.R.

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 2/18/23 MVA.

Applicant seeks payment for a left shoulder MRI performed on 3/06/23.

Relying on a peer review by Howard Levy, MD, dated 4/12/23, respondent asserts the MRI was 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]). However, I find the peer review refuted the presumption of medical necessity which attached with transmission of the invoice, as discussed below.

As the record indicates, left shoulder x-ray performed on 2/23/23 revealed no acute fracture or dislocation. The subject MRI was ordered by M. Tripathi, MD on 3/01/23. It appears EIP had suffered prior injury to the shoulder in 2022. In any event, the gravamen of the peer review was that the MRI was ordered prematurely, noting that, inter alia, as far as the shoulder was concerned, there had been no conservative therapy administered prior to ordering of the MRI (PT appears to have focused on spine and knees). In the circumstances presented, according to the peer reviewer, standard of care for shoulder injury includes treatment with analgesia and/or anti-inflammatories, followed by four to six weeks of PT prior to considering MRI.

I find that respondent's proffering of the peer review satisfied its prima facie burden of demonstrating lack of medical necessity, as the peer reviewer set forth a factual basis and medical rationale for his conclusion that the shoulder MRI was not medically necessary (see Active Imaging, PC v Progressive Northeastern Ins. Co., 2010 NY Slip Op. 51842 [U][App.

Term, 2d Dept. 2010]). When the burden of proof then shifted to applicant to demonstrate medical necessity, it did not do so. In this regard, I note a applicant offered no formal rebuttal to the peer review, nor did the underlying medical record adequately justify performing the MRI .

On this record, I sustain the denial.

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 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.

12/22/2023

(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:**  
83164280d608ee1479cdee90fe1c3894

### Electronically Signed

Your name: Joshua Adler  
Signed on: 12/22/2023