

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

East Coast Med Group, Inc.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1279-1722

Applicant's File No. ZJ161688636

Insurer's Claim File No. 1088557-04

NAIC No. 16616

ARBITRATION AWARD

I, Matthew J. Cavalier, 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 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Damien Toell, Esq from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

Erisa Ahmedi, Esq from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$545.30**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated at the hearing that the date interest accrues if the Applicant prevails is December 19, 2022.

3. Summary of Issues in Dispute

Whether the Assignor, a 25-year-old female ("JEE") on the date of the accident ("DOA") who is the eligible injured party ("EIP"), injured in a motor vehicle accident

("MVA") on September 14, 2020, received post surgery DME medical services on date of service ("DOS") February 5, 2021, and whether these post MVA medical services were correctly billed in the sum of \$545.30 and timely submitted by the Applicant,

Whether the Applicant has proven the medical necessity for medical services rendered on the aforementioned dates of service,

Whether the Respondent can maintain the defense of not medically necessary medical services based upon the February 16, 2022, Peer Review of Dr. Vito Loguidice, MD?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. 11 NYCRR 65-4.5(o)(1)(Regulation 68-D).

The aforementioned bill in dispute in the sum of \$545.30 for the surgical durable medical services rendered was timely forwarded by the Applicant to the Respondent and the Respondent denied the claim as not medically necessary based on the peer review report of Dr. Loguidice.

Fee Schedule

The Parties requested that I take Judicial Notice of the fee schedules in this matter and agreed at the Hearing that the original sum billed by the Applicant, \$545.30, was the correct NYSWC Fee Schedule rate for the disputed durable medical services and that if the Applicant prevails as to medical necessity, they will be awarded \$545.30.

Prima facie Case

Applicant establishes a *prima facie* showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received by Respondent and that payment of no-fault benefits were overdue." **Mary Immaculate Hospital v. Allstate Insurance Company**, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

The Applicant has established a prima facie case of entitlement to reimbursement herein based upon the submissions and that the burden shifts to the Respondent to establish its defense to the medical treatment.

Medical Necessity

In Support of the medical necessity defense, the Respondent relied upon the peer review of Dr. Loguidice who concluded that the disputed durable medical services were not medically necessary for the following reasons:

1. Insufficient physical therapy, acupuncture, and other conservative treatments.
2. Insufficient recorded restricted ROM in the medical records.
3. The ortho exam in the submitted records does not confirm surgical necessity of the Assignor.
4. No acute trauma from the MVA in the MRI reports.
5. No proof the early treatment followed the RICE method, Rest, Ice, Compression, and Elevation, as part of the initial conservative course of treatment.
6. No casuation from the MVA to the Right Shoulder injury of the Assignor, surgery and all related medical services are not medically necessary.

I deem the peer review report to be facially sound and therefore sufficient to sustain the Respondent's burden of proof with regard to the lack of medical necessity for the durable medical services in dispute.

The burden thus shifts to the Applicant to meaningfully refute and/or rebut the peer review report.

In rebuttal to the peer review, the Applicant relied upon the submitted contemporaneous medical records, specifically the:

1. The E/R records from the DOA September 14, 2020.
2. The Initial PM&R Exam Report dated September 16, 2020, by Dr. Li.
3. The scripts for the DMEs dated September 16, 2020.
4. The initial P/T exam report dated February 18, 2020.
5. The initial chiro exam dated February 18, 2020.
6. The initial acupuncture exam dated September 16, 2020.
7. The EMG/NCV testing on October 27, 2020.
8. The initial ortho exam dated December 3, 2020.
9. Soap Notes and progress notes from the various medical disciplines.

10. The MRI of the Right Shoulder conducted on September 22, 2020., revealing various ligament tears, traumatic injuries, and fluid build-up.

11. The L Spine MRI conducted on October 3, 2020, revealing the straightening of lumbar lordosis.

12. The C Spine MRI conducted on October 3, 2020, revealing a herniation at C4/5.

13. The Right Shoulder Surgery records from DOS February 5, 2021.

14. The May 20, 2023, Rebuttal of Dr. Anjani Sinha, MD, the surgeon who performed the surgery and prescribed the post MVA DMEs to the Assignor.

The Applicant's Attorney argued that these medical documents were available and listed on the peer review that went without comment or refutation by the Peer Review doctor. Applicant also states that Dr. Loguidice cites only to AMA medical necessity guidelines and dated medical authority that fails establish a genuine standard of care that the Peer Review Doctor fails to apply to the available medical documents and thus fails to satisfy **NIR**.

Also, Applicant's Attorney argued that Dr. Loguidice states that the Assignor's injuries suffered in the MVA are not sufficiently traumatic in nature and are merely degenerative, but 11 NYCRR Regulation 68 Section 65-3.14(a) The Scope of Coverage, specifically enumerates the aggravation of preexisting conditions as a covered and reimbursable medical expense to further rebut the peer review doctor's conclusions as to the causation of the Assignor's injuries suffered in the MVA and the medical necessity of their treatment.

The Applicant argued that the peer review report of Dr. Loguidice is rebutted by these facts and documents. I do agree with the Applicant.

After reviewing the totality of the admissible and credible evidence, as well as hearing the arguments of the parties, I deem that the Applicant has successfully rebutted the peer review of Dr. Loguidice in a meaningful way for the DME in dispute. The peer review report is not sufficient to sustain the Respondent's burden of proof with regard to the lack of medical necessity.

The Applicant prevails as to medical necessity and is awarded \$545.30.

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
	East Coast Med Group, Inc.	02/05/21 - 02/05/21	\$545.30	Awarded: \$545.30
Total			\$545.30	Awarded: \$545.30

B. The insurer shall also compute and pay the applicant interest set forth below. 12/19/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

The Applicant's attorney is entitled to one attorney fee in accordance with 11 NYCRR 65-4.6.

- 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 Queens

I, Matthew J. Cavalier, 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)

Matthew J. Cavalier

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:
c5e9cb7087213776909d19bfb81082bf

Electronically Signed

Your name: Matthew J. Cavalier
Signed on: 12/22/2023