

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Orthopaedics PLLC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-23-1330-2157

Applicant's File No. STLG23-65996

Insurer's Claim File No. 0618636898

NAIC No. 19232

**ARBITRATION AWARD**

I, Paul Israelson, 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: injured person.

1. Hearing(s) held on 07/08/2024  
Declared closed by the arbitrator on 07/08/2024

Erica Avella Esq. from Strauss Terry Law Group, PLLC participated virtually for the Applicant

Christina McGreevy Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$70.24**, 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 date of the subject automobile accident was March 9, 2021, involving the injured person, a 59-year-old female, a restrained passenger in the automobile involved in the subject automobile accident.

The applicant made a claim in the amount of \$70.24 for the physical examination of the injured person by a physician's assistant conducted on March 27, 2023.

The respondent denied the applicant's claim on the basis that the subject physical examination of the injured person was not medically necessary.

Was the subject physical examination of the injured person medically necessary?

#### 4. Findings, Conclusions, and Basis Therefor

On July 8, 2024, the hearing for the within arbitration matter was conducted and closed.

At the hearing, the applicant did not raise any argument as to the timeliness of the respondent's denial of the applicant's claim.

At the hearing, the respondent did not articulate any argument as to the propriety or accuracy of the applicant's calculation of its requested fee.

#### MEDICAL NECESSITY DEFENSE:

As to the medical necessity of the subject physical examination of the injured person, "Any objection to a lack of medical necessity must be stated in a claim denial form, and must be "supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim" (Healing Hands Chiropractic, PC v. Nationwide Assur. Co., 5 Misc.3d 975, 976, 787 N.Y.S.2d 645 [Civ. Ct. N.Y. Co.2004, Kern, J.], also involving a claim for CPT compensation; see also, decisions following trial, Nir v. Allstate Ins. Co., 7 Misc.3d 544, 796 N.Y.S.2d 857 [Civ.Ct. Kings Co.2005, Matos, J.], and CityWide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 [Civ. Ct. Kings Co.2004, Battaglia, J.] ). At all stages, the insurer bears the burden of proof on a medical necessity defense (see Healing Hands Chiropractic, PC v. Nationwide Assur. Co., supra; see also Lumbermens Mut. Cas Co. v. Inwood Hill Medical, P.C., 8 Misc.3d 10014(A), 2005 WL 1662041 \*5, 2005 N.Y. Slip Op. 51101[U] [Sup.Ct. N.Y. Co.2005, Ramos, J.

The respondent provided the April 19, 2022 independent orthopedic examination report by Dr. Joseph Margulies M.D. in support of the respondent's argument that the subject physical examination of the injured person was not medically necessary.

Dr. Margulies examined the injured person's cervical spine, thoracic spine, lumbosacral spine, both shoulders, upper limbs and lower limbs, and concluded that all injury

resulting from the subject automobile accident had resolved and that the injured person was no longer in need of any further orthopedic treatment, including physical therapy, massage therapy, surgical intervention, injections, prescription medication, diagnostic testing or durable medical equipment. Dr. Margulies noted that the injured person, a 60-year-old female, informed him that, at the time of the subject automobile accident, she had not been employed, and at the time of his independent orthopedic examination, she was not employed. Additionally, Dr. Margulies noted that, at his independent orthopedic examination, the injured person stated that, "her situation is much better", complained of pain in her right shoulder, nervousness and difficulty lifting and sleeping, however, Dr. Margulies also noted that the injured person had normal motor strength, sensation to light touch and deep tendon reflexes, her gait, coordination and higher cortical functions appeared to be intact, and there were no spasms, tenderness or restriction in range of motion in the area examined by Dr. Margulies. Consequently, pursuant to the above cited authorities, Dr. Margulies's April 19, 2022 independent orthopedic examination report sustained the respondent's burden of demonstrating that the subject physical examination of the injured person was not medically necessary.

The April 19, 2022 independent orthopedic examination report by Dr. Joseph Margulies made reference to the following objective test results:

1. The May 20, 2021 MRI of the injured person's cervical spine indicating disc herniations at the C3-4, C5-6 and C6-7 levels.
2. The May 20, 2021 MRI of the injured person's lumbar spine indicating a disc herniation at the L5-S1 level.
3. The May 20, 2021 MRI of the injured person's left shoulder indicating a moderate to high grade partial thickness articular surface tear of the supraspinatus tendon.

The applicant supplied the January 30, 2023 and March 27, 2023 physical examination reports by Dr. Dov Berkowitz M.D., conducted by Shyam Shah PA, in support of the applicant's claim.

Nothing stated in these same physical examination reports or any other documentation provided by either the applicant or the respondent has credibly rebutted the conclusions drawn by Dr. Margulies as expressed in his April 19, 2022 independent orthopedic examination report.

Therefore, the applicant's claim in the amended amount of \$70.24 for the physical examination of the injured person by a physician's assistant conducted on March 27, 2023 is denied, *cf.* *Bronze Acupuncture, P.C. v. Mercury Ins. Co.* 24 Misc.3d 126(A),

889 N.Y.S.2d 881 (App. Term 2d, 11th & 13th Dists. June 12, 2009; "[T]he insurer bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb.'" Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 N.Y. Slip Op. 51282(U) at 3, 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005; where an IME report provides a factual basis and medical rationale for an opinion that services was not medically necessary, and the provider fails to present any evidence to refute that showing, the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), 880 N.Y.S.2d 8 (App. Term 2d & 11th Dist. Feb. 9, 2009).

I have reviewed and considered all other arguments, contentions and evidence from both the applicant and the respondent, and find them to be without merit.

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

07/12/2024  
(Dated)

Paul Israelson

### **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:**  
d079dbc72b9ddd4e7e31e5f1fdbe868c

### **Electronically Signed**

Your name: Paul Israelson  
Signed on: 07/12/2024