

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicore Of Jersey City, LLC  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No. 17-23-1321-8239

Applicant's File No. TLD23-1046046

Insurer's Claim File No. 0531761020001

NAIC No. 36447

**ARBITRATION AWARD**

I, Camille Nieves, 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: Eligible Injured Person (EK)

1. Hearing(s) held on 07/17/2024  
Declared closed by the arbitrator on 07/17/2024

Kurt Lundgren from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Shamar Bruce from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$19,531.41**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$8619.25 based on the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amended amount in dispute.

3. Summary of Issues in Dispute

Applicant seeks reimbursement for right shoulder surgery and injection performed on 6/28/23 following a motor vehicle accident on 4/13/23. The charges were timely denied based on a peer review by Jay Eneman, MD dated 7/17/23 based on lack of medical necessity. The EIP is a 68 year old male driver. A rebuttal is submitted by Ashraf Salem, MD.

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

Applicant seeks reimbursement for right shoulder surgery and injection performed on 6/28/23 following a motor vehicle accident on 4/13/23. The charges were timely denied based on a peer review by Jay Eneman, MD dated 7/17/23 based on lack of medical necessity. The EIP is a 68 year old male driver. A rebuttal is submitted by Ashraf Salem, MD.

The peer reviewed the pertinent records and states the EIP was a 68 year old restrained male driver treated in an ER and released. He was evaluated by Dr. Berkowitz on 5/17/23 and surgery was recommended for right shoulder derangement/impingement syndrome.

The peer states the surgery included extensive synovectomy, extensive bursectomy, lysis of ligament, debridement of biceps tendon tear, chondral lesion of the humeral head and labral tear, lysis of multiple adhesions and rotator cuff repair.

The peer states there is no such thing as a lysis of adhesions of the subacromial space. This is simply bursectomy. The patient underwent four weeks of therapy and there was 10/10 pain, decreased range of motion, positive orthopedic tests and 3/5 strength. MRI reported tendon tear, tendinosis and impingement. Given these findings, there was no need to perform surgery which was recommended on the first visit and performed after only four weeks of therapy.

A rebuttal is submitted by Ashraf Salem, MD who states the above noted complaints and findings did not change after a brief course of therapy and required surgery as therapy would not improve a tear. The decision to perform surgery is basically up to the patient and surgeon's judgement based on many factors some of which were documented here

and while some patients may opt for a complete course of therapy first, some opt for surgery sooner rather than later especially for tears which tend to progress rather than improve.

I find the peer inadequate to demonstrate lack of medical necessity and the rebuttal sufficient to establish medical necessity for surgery.

The charges are awarded.

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
	<b>Surgicore Of Jersey City, LLC</b>	<b>06/28/23 - 06/28/23</b>	<b>\$18,209.67</b>		<b>Awarded: \$8,619.25</b>
	<b>Surgicore Of Jersey City, LLC</b>	<b>06/28/23 - 06/28/23</b>	<b>\$1,321.74</b>		<b>Denied</b>
<b>Total</b>			<b>\$19,531.41</b>		<b>Awarded: \$8,619.25</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/20/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the date of filing at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject to a maximum of \$1360.00.

- 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 FL

SS :

County of Osceola

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

07/20/2024  
(Dated)

Camille Nieves

**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:**  
c2c33c5786addb396be41ced044e292c

### Electronically Signed

Your name: Camille Nieves  
Signed on: 07/20/2024