

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Ambulatory Surgery Center LLC  
(Applicant)

- and -

Enterprise Rent A Car  
(Respondent)

AAA Case No. 17-23-1325-9727

Applicant's File No. 00123477

Insurer's Claim File No. 19208408

NAIC No. Self-Insured

**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 (SX)

1. Hearing(s) held on 07/22/2024  
Declared closed by the arbitrator on 07/22/2024

Justin Rosenbaum from Drachman Katz, LLP participated virtually for the Applicant

Jake Komar from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,894.22**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$1259.33 based on withdrawal of the claim for \$634.89 without prejudice.

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

3. Summary of Issues in Dispute

Applicant seeks reimbursement for a cervical epidural injection performed on 5/23/23 following a motor vehicle accident on 1/2/23. The charges were timely denied based on a peer review by Gary Yen, MD based on lack of medical necessity. The EIP was a 25 year old male bicyclist. A rebuttal is submitted by Dmitriy Dvoskin, MD.

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

Applicant seeks reimbursement for a cervical epidural injection performed on 5/23/23 following a motor vehicle accident on 1/2/23. The charges were timely denied based on a peer review by Gary Yen, MD based on lack of medical necessity.

The peer reviewed the pertinent records and states the EIP was a 25 year old male bicyclist who did not go to an ER and was evaluated on 1/31/23 for neck and back pain. On exam of the cervical spine there was moderate tenderness and spasm. Spurling's was positive. Cervical radiculopathy was diagnosed and conservative treatment and an epidural injection was recommended.

On 5/23/23 he was re-evaluated and findings were the same. Epidural injection was performed.

The peer states the injection was unnecessary as there was no radicular pain in a dermatomal distribution with corroborative findings of radiculopathy. ESI is not recommended for axial or non-specific neck pain without herniation with radiculitis and stenosis. Here, there was no sensory or neurological deficit. Under these circumstances, ESI is not recommended.

A rebuttal is submitted by Dmitriy Dvoskin, MD who states that the literature cited by the peer does not indicate that radiation in a radicular pattern is a necessary criteria to proceed with ESI.

Dr. Dvoskin cites to the Journal of Chiropractic and Osteopathy for the proposition that in most cases nerve root pain should not be expected to follow along a specific dermatome. Some signs and symptoms caused by a herniation can vary depending on which nerve root is compressed. Pain patterns may be typical but they are not absolute.

The same is true of the absence of neurological deficits. He cites to the chiropractic exam on 1/4/23 and 4/19/23 and 5/23/23 osteopathic exams when motor strength and sensation in the upper extremities was diminished.

The 5/23/23 exam findings of radicular pain, decreased motor strength and positive Spurling's ( a clear root tension sign) and MRI reporting a disc herniation supported a

diagnosis of radiculopathy warranting ESI. Furthermore, an extensive course of conservative treatment and continued symptoms and findings also warranted ESI.

Finally, the peer concedes that ESIs are one of the most commonly performed nonsurgical interventions in the management of chronic neck pain.

I find the rebuttal sufficient to rebut the peer and to establish medical necessity for the cervical ESI.

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
	Island Ambulatory Surgery Center LLC	05/23/23 - 05/23/23	\$1,259.33		Awarded: \$1,259.33
	Island Ambulatory Surgery Center LLC	05/23/23 - 05/23/23	\$634.89		Withdrawn without prejudice
Total			\$1,894.22		Awarded: \$1,259.33

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/20/2023 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.

07/27/2024  
(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:**  
d8089f319b167c0d4bce896e09809e70

### Electronically Signed

Your name: Camille Nieves  
Signed on: 07/27/2024