

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Washington Medical P.C.  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-23-1325-1570

Applicant's File No. M06013

Insurer's Claim File No. 32-29D5-60X

NAIC No. 25178

**ARBITRATION AWARD**

I, Charles Blattberg, 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

1. Hearing(s) held on 07/03/2024  
Declared closed by the arbitrator on 07/19/2024

Ashley Andrews-Santillo, Esq. from Munawar Law Firm, PLLC participated virtually for the Applicant

Jon DePasquale, Esq. from Sarah C. Varghese & Associates f/k/a James F. Butler & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$742.01**, 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 claimant was the 67-year-old male restrained driver of a motor vehicle that was involved in an accident on 1/5/22. Following the accident, the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is the medical necessity of services provided by Applicant on 8/21/23. Respondent timely denied reimbursement based on the results of a 4/4/23 Independent Pain Management/Physical Medicine & Rehabilitation Examination (IME) conducted by Vijay Sidhwani, D.O.

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

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was the 67-year-old male restrained driver of a motor vehicle that was involved in an accident on 1/5/22. The claimant reportedly injured his neck, bilateral shoulders, mid-back and low back. There was no reported loss of consciousness. There were no reported lacerations or fractures. The claimant was transported to Long Island Community Hospital where he was evaluated, treated, and released. Purportedly on 1/6/22 the claimant presented to Brett Desing, D.C. and was initiated on chiropractic treatment. On 1/7/22 the claimant presented to Sawey Harhash, M.D. of Washington Medical, PC (Applicant) with complaints of neck pain radiating to both arms with muscle tightness and intermittent numbness, tingling, pins, needle-like sensation; as well as radiating lower back pain with muscle tightness, muscle spasms and intermittent, numbness, tingling, pins, needle-like sensation of left leg and left foot. Cervical examination revealed paravertebral muscular spasm, tenderness to palpation of the cervical facet joints and the paraspinal muscles and trigger points in both trapezius, middle, lower paracervical regions. Range of motion was restricted in all planes (quantified). Cervical Compression test (Spurling Maneuver) was positive on both sides. Thoracolumbar examination revealed paravertebral muscular spasm, tenderness to palpation of the lumbar facet joint over L4-L5, L5-S1 and the lumbar paraspinal muscles. Trigger points were present in both upper and lower lumbar paraspinal muscles. Range of motion was restricted in all planes (quantified). Straight Leg Raising test was positive on the bilaterally at 50° with pain in the hamstring and lower back. DTRs were impaired and sensation was impaired and showed deficits in both C6 (lateral forearm and thumb), right C7 (middle finger), both L5 (dorsum of the foot) and right S1 (lateral foot) dermatomal distribution. The claimant was initiated on physical therapy and home exercise. On 2/24/22 Brett A. Desing, D.C. conducted upper extremities and lower extremities EMG/NCV testing that suggested evidence of bilateral C5 and bilateral S1 radiculopathies. On 5/4/22, on referral from Dr. Desing, the claimant presented to Arkady Yusupov, M.D. of Sonoma Medical, PC with complaints of pain in the head, neck, mid back and low back. Pain was rated 8/10. Dr. Yusupov performed cervical trigger point injections. On 6/7/22 Dr. Harhash performed lumbar trigger point injections. On 7/6/22 Dr. Yusupov performed cervical trigger point injections. On 8/3/22 Dr. Yusupov performed cervical trigger point injections. On 10/29/22 Dr. Harhash performed lumbar epidural steroid injections. On 11/19/22 Dr. Harhash performed lumbar epidural steroid injections. On 12/17/22 Dr. Harhash performed lumbar epidural

steroid injections. On 1/4/23 Dr. Yusupov performed cervical trigger point injections. On 1/16/23 Dr. Harhash recommended the claimant for L4-L4, L5-S1 lumbar percutaneous discectomy. On 2/8/23 Dr. Yusupov performed cervical trigger point injections. On 4/4/23 the claimant was required to present to Vijay Sidhwani, D.O. for an Independent Pain Management/Physical Medicine & Rehabilitation Examination (IME) that was purportedly negative and Respondent determined "In accordance with the Physical Medicine & Rehabilitation / Pain Management independent medical examination performed by Dr. Vijay S. Sidhwani on 04/04/2023, the injured party is no longer in need of additional Physical Medicine & Rehabilitation / Pain Management treatment, including physical therapy. There is no medical necessity for diagnostic testing, special transportation, Injections In addition, the Right Shoulder, Left Shoulder Cervical, Thoracic, Lumbar and Occipital Neuralgia injuries are resolved. Therefore, all New York No-Fault benefits pertaining to treatment to the above injuries are denied effective 05/03/2023." On 4/24/23 Dr. Harhash performed cervical epidural steroid injections C7-T1. On 8/9/23 Dr. Yusupov conducted a follow-up examination and performed cervical trigger point injections under ultrasonic guidance. On 8/21/23 Dr. Harhash conducted a follow-up examination and performed cervical trigger point injections under ultrasonic guidance. At issue are the services provided by Dr. Harhash on 8/21/23.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op. 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. See generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op. 52116 (App. Term 1st Dept. 2006). As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and the arguments presented at the arbitration. Moreover, the case law is clear that a provider must rebut the conclusions and determinations of the IME/peer doctor with his own facts. *Park Slope Medical and Surgical Supply, Inc. v. Travelers*, 37 Misc.3d 19 (2012).

An IME report asserting that no further treatment is not medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mutual Fire Ins. Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008).

Respondent timely denied the services at issue based on the 4/4/23 Independent Pain Management/Physical Medicine & Rehabilitation Examination (IME) conducted by Vijay Sidhwani, D.O. After reviewing the claimant's history, treatment, and medical records, Dr. Sidhwani conducts what appears to be a thorough examination. Dr. Sidhwani documents the claimant's then current complaints as pain in his bilateral shoulder and low back. There was no atrophy or fasciculations. Motor system examination revealed 5/5 muscle strength in the deltoids, triceps, biceps, forearm

muscles, hand muscles, quadriceps, hamstrings, calf muscles and extensor hallucis longus muscles. Reflexes and sensation were normal. Bilateral shoulder examination revealed range of motion flexion 180/180, extension 60/60, abduction 180/180, internal rotation 70/70 and external rotation 90/90. Negative for tenderness. Drop Arm test and Apprehension tests were negative. Neer's Impingement sign was negative. Hawkins' Impingement sign was negative. Cervical examination revealed flexion 50/50, extension 60/60, bilateral lateral flexion 45/45 and bilateral rotation 80/80. Negative for tenderness/muscle spasm. Compression and Spurling's tests were negative. Thoracic examination revealed negative for tenderness/muscle spasm. Lumbar examination revealed flexion 60/60, extension 25/25, bilateral lateral flexion 25/25 and bilateral rotation 30/30. Negative for tenderness/muscle spasm. Straight leg raise test was negative. Seated leg raise test was negative. Patrick's test was negative. Dr. Sidhwani's diagnosis was right shoulder sprain resolved, left shoulder sprain resolved, cervical sprain and strain resolved, thoracic spine sprain resolved, lumbar sprain and strain resolved and occipital neuralgia resolved. Dr. Sidhwani concluded "based on the findings of my examination of the claimant today and reviewing his available medical records, further Pain Management treatment, Physical Medicine & Rehabilitation treatment or physical therapy is not reasonable or medically necessary. From a Pain Management/Physical Medicine & Rehabilitation viewpoint, he will no longer benefit from any further Pain Management follow-up, Physical Medicine & Rehabilitation follow-up or physical therapy. In addition, there is no need for any further diagnostic testing, special transportation, injections, household help, prescription pain medication, durable medical equipment/supplies, shockwave therapy or massage therapy from a Pain Management/Physical Medicine & Rehabilitation perspective. The claimant is not taking analgesia/analgesics which requires monitoring nor is the claimant a candidate for injections at this time. His right shoulder, left shoulder, neck, mid-back, low back and occipital neuralgia reached a therapeutic endpoint to treatment. There was no clinical evidence of radiculopathy. The subjective complaints are not substantiated by objective findings. Per review of the medical records treatment notes do not indicate a decrease in pain or increase in functionality."

If the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. See, *West Tremont Medical Diagnostic P.C., v. Geico*, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006).

During the 8/9/23 follow-up examination conducted by Dr. Yusupov the claimant presented with head pain rated 8/10, neck pain rated 9/10 with tightness and difficulty turning his head, midback pain rated 8/10 and low back pain rated 8/10 with tightness and shooting pain down bilateral lower extremities. Muscle strength, deep tendon reflexes and sensation were normal. Cervical range of motion: flexion 30/50°, extension 30/60°, left rotation 55/80°, right rotation 50/80°, left lateral flexion 25/45° and right lateral flexion 20/45°. Lumbar range of motion: flexion 30/50°, extension 30/60°, left rotation 55/80°, right rotation 50/80°, left lateral flexion 25/45° and right lateral flexion 20/45°.

During the 8/21/23 follow-up examination conducted by Dr. Harhash the claimant presented with complaints of neck pain radiating to both arms with muscle tightness and

intermittent numbness, tingling, pins, needle-like sensation; and lower back pain with muscle tightness, muscle spasms and intermittent, numbness, tingling, pins, needle-like sensation of left leg and left foot. Low back pain radiated to bilateral leg and feet and sometimes his left leg give out. Pain was rated 4/10. Deep tendon reflexes were normal (2+) except 1+ in the right Brachioradialis, bilateral Triceps and bilateral Achilles. Sensory examination of the upper extremities was impaired and showed deficits in both C6 (lateral forearm and thumb), right C7 (middle finger) dermatomal distribution. Sensory examination of the lower extremities was impaired and showed deficits in both L5 (dorsum of the foot), right S1 (lateral foot) dermatomal distribution. Cervical examination revealed paravertebral muscular spasm, tenderness to palpation of the cervical facet joints and the paraspinal muscles and trigger points in both trapezius, middle, lower paracervical regions. Cervical Compression test (Spurling Maneuver) was positive on both sides. Range of motion was decreased in all planes (unquantified). Thoracolumbar examination revealed paravertebral muscular spasm. There was tenderness to palpation of the lumbar facet joint over L4-L5, L5-S1 and the lumbar paraspinal muscles. Trigger points were present in both upper and lower lumbar paraspinal muscles. Straight Leg Raising test was positive on the right side at 70° with pain in the hamstring and lower back. Straight Leg Raising test was positive on the left side at 60° with pain in the hamstring and lower back. Lumbar range of motion: flexion 75/90°, extension 20/30°, left rotation 30/40°, right rotation 30/40°, left lateral flexion 25/30° and right lateral flexion 20/30°. The claimant was recommended for continued physical therapy and L4-L4, L5-S1 lumbar percutaneous discectomy.

Applicant submitted a 5/15/24 rebuttal by Sawey Harhash, M.D. who asserts "I write this letter of medical necessity to defeat the cutoff of medical treatment by Dr. Sidhwani on 4/4/2023. The IME doctor states that flexion in the lumbar spine is full at 60 degrees, yet, as per the AMA Guidelines to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, range of motion in flexion is full at 90 degrees. The patient was able to obtain 60 degrees and as such, did not get to a full range of motion in flexion and therefore had positive findings that Dr. Sidhwani overlooked. The patient presented on 4/24/23 for a cervical epidural steroid injection due to his diagnosis of cervical radiculopathy. The patient had also been referred for a lumbar discectomy due to his severely positive findings in the lower spine. The patient presented again for a follow up on 8/21/23. On this examination the patient had decreased reflexes, decreased sensation, specifically deficits at C6, C7 and L5 and S1. Examination of the cervical spine revealed tenderness, spasms, trigger points, reductions in range of motion and positive testing: Cervical Compression Test. Examination of the lumbar spine revealed tenderness, spasms, trigger points, reductions in range of motion and positive testing: Straight Leg Raising Test. A Comprehensive Rehabilitation Program was in place. The patient still required treatment for his significant injuries from his accident. Please see my patient chart."

I find that medical records and the 5/15/24 rebuttal by Sawey Harhash, M.D. relied on by Applicant show consistent complaints of pain with positive findings thereby warranting additional treatment. I am persuaded that the contemporaneous medical records indicate the claimant was benefiting from the treatment at issue. I find Applicant has successfully rebutted the findings and recommendations of Respondent's IME report and established the need for the treatment at issue that was performed beyond the cut-off date.

Accordingly, Applicant is awarded \$742.01.

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
	Washington Medical P.C.	08/21/23 - 08/21/23	\$250.00	Awarded: \$250.00
	Washington Medical P.C.	08/21/23 - 08/21/23	\$492.01	Awarded: \$492.01
Total			\$742.01	Awarded: \$742.01

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/14/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 11/14/23 (the date that arbitration was requested) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

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 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of \$1,360.

- 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 Nassau

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

08/02/2024  
(Dated)

Charles Blattberg

**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:**  
5d9f95a8831cab5c3249664e1ea5b77

### Electronically Signed

Your name: Charles Blattberg  
Signed on: 08/02/2024