

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LR Medical PLLC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-23-1329-0933

Applicant's File No. 00123243

Insurer's Claim File No. 0489977460001

NAIC No. 36447

ARBITRATION AWARD

I, Carolyn Terrell-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: Claimant

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

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

Matthew Patrick Smith, Esq. from Callinan & Smith LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$788.19**, 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

It is Respondent's position that the bills totaling the amount of \$788.19 for healthcare services specifically, an OV and shockwave therapy allegedly rendered on 3/30/22 and 4/13/22 is denied based upon a peer review conducted by Jeffry R. Beer, MD dated 5/6/22. A rebuttal to the peer was submitted by LEONID REYFMAN, MD, dated 6/2/24. DOS 4/13/22 specifically was denied based on the EIP failure to cooperate.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). These submissions constitute the record in this case. This case was decided on the submissions of the parties as contained in the ECF and the oral arguments of the parties' representatives. There were no witnesses.

According to the available medical records, the claimant is a 42-year-old male who was involved in an automobile accident on March 21, 2022 as a restrained driver whose vehicle was struck from the driver side. He was transported by ambulance to a hospital emergency room. Following the accident, he described cervical, lumbar, right knee and right ankle pain. The pain was rated as high as 8/10 on visual analog scale.

He came under the care of Leonid Reyfman, MD. He participated in physical therapy and chiropractic treatments.

A shockwave therapy treatment was administered on March 30th, 2022.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (Insurance Law § 5106[a]; 11see NYCRR 65-3.8[c]; 11 NYCRR 65-3.5).see also Infinity Health Products, Ltd. v. 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). Eveready Ins. Co., claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. , 25 N.Y.3d 498, 506, 14Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co. N.Y.S.3d 283, 290 (2015). Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bills.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co Id. Once an applicant establishes a prima facie case the burden then shifts to the insurer to prove its defense. See Citywide Social Work &, 3 Misc. 3d 608, 2004, NY Slip Op Psych. Serv. P.L.L.C v. Travelers Indemnity Co. 24034 (Civ. Ct., Kings County 2004)

Factual Background

As part of Respondent's investigation into the claim, (SV) was requested to appear for an EUO. This request came about as Liberty Mutual was provided with a brief video of the loss, provided by a purported witness to the incident. The video itself is a video of a cellular phone playing the subject loss. The video portrays the insured sedan swerving into a box truck and then towards parked vehicles without impact.

On June 6, 2022, claimant (SV) appeared and provided testimony. (SV) provided testimony as to the facts of the loss, including how he was able to obtain the aforementioned video from a witness with whom he struck up a conversation with while waiting for the police. Mr. Vale also testified that the adverse driver offered to take him

somewhere to fix the purported damage and offered to pay for the same. He called the police, who came to the scene and provided an MV104 form but did not take a report. The officers instructed Mr. Vales to submit the MV104 form to Albany should the adverse driver not call him following the accident. The officers also instructed Mr. Vale to take photographs at the scene.

Due to (SV)s testimony and the foregoing facts, post-EUO verification /was requested to verify the claim further and determine whether the loss was a covered event.

By correspondence dated July 21, 2022, and August 22, 2022, addressed to Stephenson Vales through his counsel, Harmon Linder & Rogowsky, located at 3 Park Avenue, 23rd Floor, Suite 2300, New York, New York 10016, Stephenson Vales was asked to provide:

1. Copies in electronic format of the video secured by your client, which recorded the collision of March 21, 2022;
2. Photographs that your client took after the vehicle collision on March 21, 2022;
3. Copies of your cellular telephone records for cellular telephone records for the dates of March 14, 2022, through March 28, 2022;

Respondent contends that despite the requests being mailed to Mr. Vales and his counsel, neither the claimant nor his attorney provided the requested verification documents nor a reasonable excuse for their failure to comply.

Respondent denied the Applicants claim in the amount of \$87.80 for non cooperation.

I hereby sustain Respondents denial based on the evidence before me.

Peer Review

Dr. Beer denies the medical necessity of the 3/30/22 ESWT based on his assertion that "this treatment modality has not been supported by well-designed studies in the setting of acute spinal pain," and quotes literature questioning the efficacy of ESWT. Dr. Beer quotes literature dated 2011 which pertains to treatment of the lower back and literature dated 2001 which pertains to treatment of the elbow, both of which Dr. Reyfman argued in rebuttal are outdated and irrelevant to the case at hand, where the treatment performed was to the cervical region.

In opposition to the peer review report of Dr. Beer, Applicant offers a Rebuttal by Leonid Reyfman, MD, the treating physician. Dr. Reyfman discusses the mechanism of shockwave treatment and its utility in treating a variety of conditions, including those presented in the Assignor's case. Moreover, Dr. Reyfman advances, shockwave therapy is a commonly performed conservative modality with low safety risks. Dr. Reyfman additionally provides medical literature supporting the efficacy and necessity of shockwave treatment.

I am persuaded by Dr. Reyfman's position. He not only directly and meaningfully addresses and rebuts Dr. Beers dispositive points but also, he independently justifies necessity consistent with the standard of care. On the Record before me, I find that necessity is established. I award the claim for DOS 3/30/22 in the amount of 700.39.

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
	LR Medical PLLC	04/13/22 - 04/13/22	\$87.80	Denied
	LR Medical PLLC	03/30/22 - 03/30/22	\$700.39	Awarded: \$700.39
Total			\$788.19	Awarded: \$700.39

B. The insurer shall also compute and pay the applicant interest set forth below. 12/15/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See, generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217, 906 N.E.2d 1046 (2009).

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d)." This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$1,360.00.

- 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 NY

SS :

County of Nassau

I, Carolynn Terrell-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.

08/02/2024
(Dated)

Carolynn Terrell-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:
8bd76797aa0188245b7d229eac618861

Electronically Signed

Your name: Carolynn Terrell-Nieves
Signed on: 08/02/2024