

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Medex Diagnostic & Treatment Center LLC (Applicant)	AAA Case No.	17-23-1315-0275
- and -	Applicant's File No.	LIP-30327
	Insurer's Claim File No.	0519408070002
LM General Insurance Company (Respondent)	NAIC No.	36447

ARBITRATION AWARD

I, Stacy Presser, 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: Assignor

1. Hearing(s) held on 08/22/2024
Declared closed by the arbitrator on 08/22/2024

Usman Nawaz, Esq from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Dave Koestner, Claims Rep from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$18,140.33**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate to Applicant having met its prima facie burden, as well as to the timeliness of Respondent's denial.

3. Summary of Issues in Dispute

Applicant is seeking reimbursement of a facility fee associated with left shoulder arthroscopy undergone on July 21, 2023 by the Assignor, a 67-year-old female passenger who sustained injuries in a motor vehicle accident on December 19, 2022.

Respondent denied the claim as medically unnecessary based upon a peer review by Matthew Skolnick, M.D. and/or as billed in excess of the fee schedule.

4. Findings, Conclusions, and Basis Therefor

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

Respondent bears the burden of persuasion as to its defense of a lack of medical necessity, which must be supported by competent evidence such as an independent medical examination, peer review or other proof which establishes a sufficient factual basis and medical rationale predicated upon generally accepted medical practices. Once sufficient evidence is presented demonstrating that the treatment rendered constitutes a deviation from the standard of care, then and only then does the burden shift to Applicant to present its own evidence of medical necessity. See, Citywide Social Work & Psy. Servs., PLLC v. Allstate Ins. Co., 8 Misc. 3d 1025A (2005); Healing Hands Chiropractic, P.C. v. Nationwide Assur. Co., 5 Misc. 3d 975 (2004); Nir v. Allstate Ins. Co., 7 Misc. 3d 544 (2005); West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131A (2006); Yklik, Inc. v. Geico Ins. Co., 28 Misc. 3d 133A (2010).

In a peer review performed on Respondent's behalf, Matthew Skolnick, M.D. provides a summary of the clinical record with references to medical standards deemed relevant. Dr. Skolnick noted a documented history of accident-related bilateral shoulder pain, for which Assignor came under the care of orthopedic surgeon Michael Russonella, D.O. With regard to the left shoulder, findings included tenderness, restricted range of motion and positive impingement signs. MRI of the left shoulder showed a partial-thickness tear within the supraspinatus tendon. Conservative management, in the form of anti-inflammatory and muscle relaxant medications, along with physical therapy, was advised. According to Dr. Skolnick, a non-operative approach is indicated as first line treatment for partial thickness tears, due to their low risk of progression. Physical therapy, anti-inflammatories and activity modification are appropriate. Surgery is generally reserved for those who have failed non-operative measures and have persistent pain and/or disability. Dr. Skolnick concluded that is no evidence that Assignor's left shoulder was deteriorating despite a course of conservative management. The peer review establishes a sufficient factual basis and medical rationale to satisfy Respondent's burden of proof under the afore-cited case law.

Applicant opted not to submit a rebuttal directly addressing the afore-referenced peer report. I have thoroughly reviewed the medical records in evidence, and while I find references to a decision to proceed with right shoulder arthroscopy, those same reports refer to the need to first complete "appropriate rehabilitation" for the left shoulder, described as thrice weekly physical therapy. Yet, physical therapy progress notes document only three treatment dates on which left shoulder pain is addressed, with the remainder noting only neck and back complaints. Absent evidence either challenging the standard of care advanced in the peer review, or establishing a failure of conservative management, I must conclude that Applicant has failed to effectively or persuasively refute Respondent's medical necessity defense.

Accordingly, for the reasons delineated above, I find in favor of the Respondent and deny the Applicant's claim in its entirety.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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 New York

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

08/28/2024
(Dated)

Stacy Presser

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:
14fb5c47e2c368483b1beb9782ee6a32

Electronically Signed

Your name: Stacy Presser
Signed on: 08/28/2024