

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hudson Surgery Center LLC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-24-1340-2880

Applicant's File No. 00130137

Insurer's Claim File No. 0711060475
2DA

NAIC No. 19232

ARBITRATION AWARD

I, Pamela Hirschhorn, 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: Injured Person

1. Hearing(s) held on 08/30/2024
Declared closed by the arbitrator on 08/30/2024

John Kilduff, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Maria Litos, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,259.33**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

See, the within award.

3. Summary of Issues in Dispute

The injured person was a male (DOB 9/14/75) who was on a scooter when he was struck by a motor vehicle on January 20, 2023.

The claim is for the facility fee in connection with a procedure performed on December 11, 2023.

The parties stipulated that the claim was timely denied based upon the IME report of Pierce J. Ferriter, M.D., referencing an IME performed on August 18, 2023. The issue is whether the IME established prima facie that continued treatment was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

The injured person was a male (DOB 9/14/75) who was on a scooter when he was struck by a motor vehicle on January 20, 2023.

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In the prior award of *Pain Physicians NY PLLC & Allstate Ins. Co.*, AAA Case no. 17-24-1334-0171 (Pamela Hirschhorn, Arb.), this arbitrator reviewed the IME report of Dr. Ferriter, as well as the rebuttal by Dmitriy Dvoskin, M.D. This arbitrator noted that the IME doctor concluded that the injured person's condition had resolved, and that continued treatment was not medically necessary.

The rebuttal referenced that the injured person was riding a scooter when he was struck on the right side by a delivery truck. Due to the impact, he fell on his left side. He went to Metropolitan Hospital for treatment.

The MRI of the cervical spine performed on April 3, 2023, revealed disc herniations at multiple levels impinging on the spinal cord.

Dr. Dvoskin examined the injured person on June 7, 2023, for complaints of neck pain at 8/10 VAS radiating to bilateral shoulders and upper extremity aggravated by neck flexion/extension and lateral rotation. He also reported concomitant fatigue, impaired work tolerance, and difficulty sleeping, concentrating, and performing activities of daily living. Interim treatment consisted of medication and physical therapy.

Examination of the cervical spine revealed tenderness, muscle spasms, limited range of motion, positive maximum cervical nerve root compression and Spurling's test bilaterally both indicative of nerve root compression secondary to disc displacement. Neurological examination revealed diminished sensation to pinprick and light touch along the right C5 and C6 dermatomes; decreased reflex on the right brachioradialis and bicep at +1/+2; and decreased strength at 4/5 on the right deltoid, biceps, and wrist extensors. The patient was diagnosed with cervical disc displacement, cervical radiculopathy, and disorder of ligament and vertebrae. Because of the persistence of pain despite conservative treatments, cervical epidural steroid injection at C7-T1 level was recommended and performed under fluoroscopic guidance on June 21, 2023.

Dr. Dvoskin noted that at the time of follow up on July 19, 2023, the injured person reported persistent pain and difficulty with his ADLs. The ESI provided 45% pain relief, but the pain gradually returned. He was administered a repeat cervical epidural steroid injection at C7- T1 level under fluoroscopic guidance and cervical paraspinal trigger point injection.

The patient returned on August 4, 2023, and reported 20% improvement in pain as well as frequency/intensity of numbness and tingling in his hands and fingers thus far. The pain continued to interfere with his daily function and quality of life. Repeat epidural steroid injection was recommended and continuation of therapy was advised.

Dr. Dvoskin disagreed with the IME doctor that the injured person's condition had resolved.

The IME doctor noted that the injured person had continuing complaints of pain. Although the IME referenced that the examination of the cervical spine was normal, Dr. Dvoskin stated that the injured person's complaints of pain could make the muscle less powerful and more difficult to use, and thus the IME doctor's findings were inconsistent with reasonable clinical expectation.

Dr. Dvoskin also noted that the MRI of the cervical spine, was not reviewed by the IME doctor, and the MRI showed multilevel disc herniation affecting the sensitive neural elements causing this patient's pain and symptoms.

Dr. Dvoskin questioned the IME doctor's ability to arrive at an accurate diagnosis of the patient's condition, since the MRI was not reviewed.

Dr. Dvoskin also noted that at the time he examined the injured person on August 21, 2023, which was 3 days after the IME, the injured person reported neck pain at 5/10 VAS radiating to the shoulders and upper extremities with numbness and tingling in both hands and fingers.

Physical examination of the cervical spine revealed tenderness and spasms, limited ranges of motion with pain at extremes of motion, positive nerve root tension signs, diminished sensation to pinprick and light touch along the right C5 and C6 dermatomes, + 1/+2 reflex of the right brachioradialis and biceps tendons, and muscle weakness of the right deltoid, biceps, and wrist extensors. The physical therapy regimen and pain medications were continued.

Dr. Dvoskin noted that the injured person had continuing complaints and findings at the time of follow up examinations performed on September 11, 2023, and October 23, 2023.

Dr. Dvoskin noted that on October 30, 2023, the pre-operative diagnosis was C6-C7 right central/paracentral disc herniation. Dr. Dvoskin performed cervical anterior percutaneous discectomy and annuloplasty at C6-C7 level under fluoroscopic guidance.

Dr. Dvoskin stated that in light of the complaints of pain documented during and after the IME, Dr. Ferriter in his IME incorrectly recommended that there was no medical necessity for further treatment. Dr. Dvoskin noted that multiple examinations after the IME revealed that the patient had persistent neck pain, and abnormal findings warranting further treatment.

In the prior award, this arbitrator considered the evidence and found that the applicant demonstrated by a preponderance of the credible evidence that continued treatment was medically necessary. The injured person had continuing and persistent subjective and objective findings proximate in time to the IME. Dr. Dvoskin in his rebuttal, addressed the IME doctor's examination and set forth with specificity how the patient's continuing complaints and findings warranted continued treatment as well as the services at issue. Dr. Dvoskin referenced the medical benefit to be derived from continued treatment.

This arbitrator finds that no evidence has been proffered in the instant case that would cause this arbitrator to disturb the determination reached in the prior case.

Since there were no fee schedule issues raised, the applicant is awarded reimbursement for the services as billed. Attorney's fees shall be calculated pursuant to 11 NYCRR 65-4.6 (d). Interest shall be calculated from the AR1 filing date. See, 11 NYCRR 65-3.9 (c).

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
	Hudson Surgery Center LLC	12/11/23 - 12/11/23	\$1,259.33	Awarded: \$1,259.33
Total			\$1,259.33	Awarded: \$1,259.33

B. The insurer shall also compute and pay the applicant interest set forth below. 03/14/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

See, the within award.

C. Attorney's Fees

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

See, the within award.

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

09/02/2024

(Dated)

Pamela Hirschhorn

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:
e65628c233e105dce423cd5ef4c8a9bf

Electronically Signed

Your name: Pamela Hirschhorn
Signed on: 09/02/2024