

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NextStep Healing, Inc.
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1338-8114
Applicant's File No. 157617
Insurer's Claim File No. 32-50W8-49Q
NAIC No. 25178

ARBITRATION AWARD

I, Alana Barran, 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: Patient

1. Hearing(s) held on 08/16/2024
Declared closed by the arbitrator on 08/16/2024

Edilaine D'Arce from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Shenikqua Snell 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, **\$980.07**, 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 patient, AJ, was a 26-year-old female that was involved in an accident on 6/6/2023. This is a claim for durable medical equipment provided on 12/21/2023 through 1/10/2024 to the patient. The Respondent denied the claim based on the peer review of Dr. Howard Levy. The issues raised are whether the services at issue were medically necessary.

4. Findings, Conclusions, and Basis Therefor

My decision is based on the arguments of the representatives for parties appearing and those documents contained in the ADR center for this case. No fee schedule issues were raised related to the amount in dispute.

The Respondent relied on the Peer Review of Dr. Howard Levy of 1/22/2024 in denying the bills for cold compression unit and CPM rental at issue for lack of medical necessity. Dr. Levy reviewed the medical records and states that left shoulder surgery was performed on 12/15/2023; that if the patient had conservative care including painkillers after several months an operative procedure might be considered; that the claimant was treated with 63 sessions of physical therapy over 5 months; that in IME of Dr. Howard Levin on 12/5/2023 the claimant had subjective left shoulder pain with normal findings, diagnosis of left shoulder sprain resolved and no need for further treatment which indicated that the physical therapy sessions helped resolve the pain symptoms; that the conservative treatment successfully resolved the left shoulder injury; that the reason why the left shoulder surgery was performed when there was a complete resolution of the claimant's left shoulder symptoms was not understood, the surgical correction was not warranted; that the left shoulder surgery as well as post-operative treatments were not medically necessary; that there was a causal relationship with the MVA. Notably, the IME of Dr. Howard Levin on 12/5/2023 is in submission and the Respondent argues that it relies on said report which is not the basis for the denial on the NF10 and is not considered independently as a basis for denial here. I find the peer review to be unpersuasive and insufficient to meet the Respondent's burden of proof to sustain its defense of lack of medical necessity which he states in a conclusory manner that the normal findings during the IME and the physical therapy sessions successfully resolved the left shoulder injury, and without a specific discussion of any other type of treatment including DME states that post-operative treatments are not medically necessary.

The records in submission include rebuttal dated 7/18/2024 by Dr. Andrew Miller stating that "complaints and positive findings such as pain in the left shoulder along with tenderness upon palpation, decreased range of motion with pain and stiffness, decreased muscle strength and positive Neer's test. Considering the symptomatology, left shoulder arthroscopy was medically necessary. Cold therapy following surgery or musculoskeletal and soft tissue injury has long been accepted in the medical field as an effective tool for reducing inflammation, pain and swelling. In the cold therapy unit (CTU), a motorized pump both circulates cold water and may also provide pneumatic compression. When used in conjunction with the CPM machine for the first 2 weeks post-surgery, CTU help not only with swelling and pain, thus enhancing CPM's ability to improve ROM and return to normal function quicker, also helps with control of the overmedication for pain. And, with respect to CPM, motion and stress are important for the maintenance of normal connective tissue and the healing of injured connective tissue, Motion enhances blood flow and decreases pain, Passive motion involves movement of a joint without active contraction of muscle groups. It is used to maintain range of motions (ROM) and flexibility in joints in the early postoperative and rehabilitative period after surgery or injury when active movement might disrupt the repair process or is too painful to perform,

Continuous passive motion (CPM) is a rehabilitation technique that involves introduction of progressive passive range of motion (PROM) to an extremity through an externally applied passive force. Therefore, the post-operative medical supplies were medically necessary"; and medical records. I find the records in submission to be more persuasive and sufficient to rebut the peer review findings of Dr. Howard Levy including the reference made to and conclusions relied upon based on the IME findings of Dr. Howard Levin.

The applicant has established its initial entitlement to no fault benefits. The burden then shifts to the respondent. The respondent's denial for lack of medical necessity must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc. 3d 975; Citywide Social Work, et. al v. Travelers Indemnity Co., 3 Misc. 3d 608. The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 2009 NY Slip Op 00351 (App Div. 2d Dept., Jan. 20, 2009); Channel Chiropractic, P.C. v. Country-Wide Ins. Co., 2007 Slip Op 01973, 38 A.D.3d 294 (1st Dept. 2007); Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 2007 NY Slip Op 27427, 17 Misc.3d 97 (App Term 1st Dept., 2007).

In order for an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. Yklik, Inc. v. Geico Ins. Co., 2010 NY Slip Op. 51336(U) (App Term 2d, 11th & 13th Dists. July 22, 2010); High Quality Medical, P.C. v. Mercury Ins. Co., 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009).

I find the peer review of Dr. Howard Levy has failed to set forth a sufficient factual basis and medical rationale for his opinion that the disputed services at issue were not medically necessary and therefore has not established, *prima facie*, a lack of medical necessity for those services rendered by applicant. The burden has not shifted to the Applicant and has nevertheless been rebutted. Therefore, the claim is granted.

Comparing the relevant evidence presented by both parties against each other and the above referenced standards, the claim is awarded in its entirety.

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
	NextStep Healing, Inc.	12/21/23 - 01/10/24	\$980.07	Awarded: \$980.07
Total			\$980.07	Awarded: \$980.07

B. The insurer shall also compute and pay the applicant interest set forth below. 03/04/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. (11 NYCRR 65-3.9(c)). The end date for the calculation of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. (11 NYCRR 65-3.9(a)). Where the claim is submitted electronically after the close of business or on the weekend, I find that the claim is deemed received on the next day of business following the electronic submission, and interest is awarded as of the next day of business following the electronic submission of the claim.

C. Attorney's Fees

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

For cases filed prior to February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to a minimum of \$60 and a maximum of \$850. For cases filed on or after February 4, 2015, 20 percent of the amount of first party benefits awarded herein, plus interest thereon, subject to no minimum and a maximum of \$1360 (11NYCRR65-4).

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 NJ

SS :

County of Essex

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

09/06/2024
(Dated)

Alana Barran

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:
bf787f1147c045f446dff27c331898b5

Electronically Signed

Your name: Alana Barran
Signed on: 09/06/2024