

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Stand Up MRI of Bensonhurst PC
(Applicant)

- and -

Hereford Insurance Company
(Respondent)

AAA Case No. 17-24-1345-4221

Applicant's File No. NicolasH

Insurer's Claim File No. 96555-03

NAIC No. 24309

ARBITRATION AWARD

I, Lester Hill, 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: EIP

1. Hearing(s) held on 09/06/2024
Declared closed by the arbitrator on 09/06/2024

Michael Tomforde from Dash Law Firm, PC participated virtually for the Applicant

Chris Fingerhut from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,728.97**, 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

Were the MRIs of the cervical and lumbar spine conducted on February 14, 2024 medically unnecessary based upon the IME conducted by Dr. Douglas Unis on September 16, 2022? The 58-year-old male EIP was involved in a motor vehicle accident on January 4, 2022 and received treatment for injuries to the neck, low back, and right shoulder.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the MRIs of the cervical and lumbar spine conducted on February 14, 2024 were medically unnecessary based upon the IME conducted by Dr. Douglas Unis on September 16, 2022.

I have reviewed the documents contained in the electronic case folder as of September 6, 2024. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on September 6, 2024.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med.*, P.C. 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. *Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co.*, 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on January 4, 2022. The EIP was treated at the emergency room of Brookdale Hospital on the day of the accident. Thereafter, the EIP entered a course of treatment for injuries to the neck, low back, and right shoulder. The EIP underwent MRIs of the cervical and lumbar spine on March 5, 2022 which reported disc herniations from C3 through C7 and L3 through L5 and a disc bulge at L5-S1. The EIP underwent an MRI of the right shoulder on May 7, 2022 which reported tears of the labrum. The EIP underwent surgery to the right shoulder on May 26, 2022. The EIP presented to NY Med of Brooklyn on July 22, 2022 with complaints of pain in the neck, mid back, low back and right shoulder. The examination reported reduced range of motion of the cervical and lumbar spine with spasms in the cervical and lumbar musculature and reduced muscle strength in the upper and lower extremities. The EIP underwent electrodiagnostic testing of the upper extremities on July 25, 2022 which reported findings consistent with carpal tunnel syndrome. The EIP presented to NY Med of Brooklyn on July 22, 2022 at which time the EIP was administered lumbar branch block injections. The EIP presented to NY Med of Brooklyn on August 24, 2022 with complaints of pain in the neck and low back and right shoulder. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine, positive facet loading in the cervical and lumbar spine, reduced muscle strength in the upper and lower extremities and reduced sensation in the cervical dermatomes. The EIP was administered cervical epidural steroid injection on August 24, 2022. The EIP underwent electrodiagnostic testing of the lower extremities on August 29, 2022 which reported evidence of L4-L5 radiculopathy.

Dr. Unis conducted the orthopedic IME on September 16, 2022 at which time the EIP complained of pain in the neck, mid back, low back, and right shoulder. The EIP reported a history of right shoulder surgery in 2012. The examination reported normal range of motion of the cervical and lumbar spine with negative orthopedic testing and

normal neurological findings, normal range of motion with no tenderness and negative orthopedic testing for the bilateral shoulders, elbows, wrists, and hips, knees, and ankles. The conclusion was that the EIP needed no further orthopedic treatment.

No Fault benefits were terminated effective October 22, 2022.

The EIP presented to NY Med of Brooklyn on September 14, 2022 with complaints of pain in the neck, low back, and right shoulder. The examination reported reduced range of motion of the right shoulder. The EIP was administered lumbar epidural steroid injections on September 14, 2022. The EIP underwent lumbar laminectomy surgery on October 10, 2022. The applicant conducted MRIs of the cervical and lumbar spine of the EIP on February 14, 2024. The applicant timely submitted a claim for this service.

I find the respondent has not demonstrated by sufficient factual basis and medical rationale that the treatment subsequent to the IME cut off was medically unnecessary. A credible IME report shifts the burden to the applicant to demonstrate medical necessity. I find the reports of NY Med of Brooklyn both prior to and subsequent to the IME cut off to be credible, sufficiently detailed and consistent with the objective evidence which reported multiple disc herniations and electrodiagnostic testing which demonstrated lumbar radiculopathy. The EIP underwent surgery to the lumbar spine on October 11, 2022. The applicant submitted daily progress notes throughout the course of treatment which reflect reduced range of motion of the cervical and lumbar spine with tenderness. Additionally, following the lumbar surgery, the EIP's complaints of pain decreased which I find to be evidence attesting to the efficacy of the post IME treatment. Based upon the totality of the credible evidence, I find the applicant has amply demonstrated that the treatment subsequent to the IME cut off was medically necessary.

Accordingly, applicant's claim is granted 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
	Stand Up MRI of Bensonhurst PC	02/14/24 - 02/14/24	\$1,728.97	Awarded: \$1,728.97
Total			\$1,728.97	Awarded: \$1,728.97

B. The insurer shall also compute and pay the applicant interest set forth below. 04/25/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded from the date of the filing of the AR1 at a rate of 2% per month, simple, ending with the payment of the claim.

C. Attorney's Fees

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

Attorney fees are awarded pursuant to 11NYCRR 65-4.6(e) at a rate of 20% of the awarded claim, including interest, to a maximum of \$1360.00.

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, Lester Hill, 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)

Lester Hill

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:
314c7243daaf2948d7c8b07b55831b7f

Electronically Signed

Your name: Lester Hill
Signed on: 09/06/2024