

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

ASM Diagnostic Inc.  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No. 17-23-1292-5201

Applicant's File No. DK23-350180

Insurer's Claim File No. 1115095-03

NAIC No. 16616

**ARBITRATION AWARD**

I, Philip Wolf, 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 09/06/2024  
Declared closed by the arbitrator on 09/06/2024

Rachel Stein, Esq. from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Luke Rosenberger, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,733.96**, 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

Assignor, a 43-year-old male, was a passenger in a motor vehicle which was involved in an accident on June 14, 2022. As a result of the accident Assignor sustained injuries to his head, neck, shoulders, and left knee. Applicant is seeking reimbursement for technical component of vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies performed on October 27, 2022. Respondent issued a timely denial predicated upon a December 8, 2022 peer review conducted by Harry Jackson, M.D. and based upon an October 23, 2022 IME cut-off. The issue in dispute is whether Respondent has established its lack of medical necessity defenses.

#### 4. Findings, Conclusions, and Basis Therefor

Applicant is seeking a total of \$1,733.96 for the technical component of vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies performed on October 27, 2022. This award is rendered upon the oral arguments of both parties and upon the documentary evidence submitted by both parties. The documentary evidence submitted by the parties consists of the documents contained within the ADR Center for this matter as of September 13, 2024.

##### **Applicant's Prima Facie Case**

Assignor was a passenger in a motor vehicle which was involved in an accident on June 14, 2022. As a result of the accident Assignor sustained injuries to his head, neck, shoulders, and left knee. On October 27, 2022, Assignor presented to Applicant and underwent vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies. Respondent has acknowledged receipt of Applicant's bills.

After reviewing the evidence submitted by Applicant, I find that Applicant has submitted sufficient credible evidence to establish a prima facie case with respect to the technical component of vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies performed on October 27, 2022. *See, Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 2015 NY Slip Op 04787, (2015).

##### **Respondent's Peer Review Defense**

Respondent issued a timely denial predicated upon a December 8, 2022 peer review conducted by Harry Jackson, M.D. Doctor Jackson opined that the vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies were not medically necessary. In reaching his opinion, Dr. Jackson does cite/reference to medical authority in compliance with the requirements set forth in Jacob Nir, M.D. a/a/o Josaphat Etienne wolf v. Allstate Ins. Co., 7 Misc. 3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005) and CityWide Social Work & Psychological Services, P.L.L.C. a/a/o Tremayne Brow v. Travelers Indemnity Company, 3 Misc. 3d 608, 777 N.Y.S.2d 241 (Civ. Ct. Kings Co. 2004).

Doctor Jackson states "post traumatic headache and dizziness are very common symptoms and do not warrant advanced studies. The symptoms are non-specific and do not warrant such advanced studies at this point in the treatment and diagnostic protocols." Doctor Jackson noted that doppler studies are used to (1) check heart function, (2) look for blockages, (3) check for blood vessel damages and for defects in the structure of the heart, (4) look for narrowing of blood vessels, (5) monitor blood flow after surgery, and (6) check for normal blood flow in a pregnant woman. "There were no clinical findings present which would create a suspicion for the above-mentioned disorders in this claimant's case. Overuse of diagnostic studies is likely

to harm patients physically, psychologically and financially, and could threaten the viability of health systems. Hence, there was no need to proceed with these studies in this particular case."

Where Respondent has presented sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Applicant, which must present its own evidence of medical necessity and/or rebuttal to Respondent's peer review. *See, A. Khodadadi Radiology, P.C. v. Central Mutual Fire Ins. Co.*, 2007 NY Slip Op 51342U, 16 Misc. 3d 131A (2nd Dept. 2007).

Applicant has submitted a rebuttal by Drora Hirsch, M.D. Doctor Hirsch states "the most common cause of blunt traumatic injury to the carotid vasculature is motor vehicle accident." "Diagnosis is frequently delayed as symptoms and signs are often absent initially, and the task is to identify susceptible patients and devise suitable radiological screening methods." "Importantly, avoiding diagnostic delays will prevent development of irreversible damage and loss of function in muscle and nerves requiring interventional or surgical treatment." Transcranial Doppler ultrasound provides rapid, noninvasive, real-time measures of cerebrovascular function. TCD is an inexpensive, but essential tool that can be used along with a battery of other tests in clinical diagnosis of a number of cerebrovascular disorders such as acute ischemic stroke, vasospasm, traumatic brain injury, and cerebral microembolization." With respect to the VNG testing, Dr. Hirsch states "this study confirms that both minor head injuries and whiplash can cause both peripheral and central vestibular damage that is occasionally transient." VNG "can reveal not only pathological nystagmus, but can also follow the evolution of the post-trauma neuro-ontological damage over time." "the patient was recommended VNG testing to further evaluate patient's symptoms and to help distinguish the origination of patient's current symptoms and that based on the electrodiagnostic testing the patient would be recommended appropriate treatment regimen including balance rehabilitation or neuropsychological evaluation." "SSR testing is to evaluate autonomic dysfunction as well as small fiber neuropathy. If a patient reports numbness, tingling, paresthesia in the hands or feet, this could be secondary to small fiber neuropathy hence why this test is done."

At the time of the June 20, 2022 PMR evaluation, there were no documented complaints of headaches, dizziness, tinnitus or vertigo. At the time of the October 27, 2022 electrodiagnostic and physical evaluation, there were no documented complaints of headaches, dizziness, tinnitus or vertigo. The testing was performed more than four months post-accident without any documented vestibular complaints, dizziness, or headaches on June 20, 2022 and October 27, 2022. Doctor Hirsch's statements that the testing was performed to rule out a traumatic brain injury is misplaced for an accident that took place more than four months earlier.

Based upon the lack of documented symptoms discussed herein, I agree with the opinion of Dr. Jackson and his rationale as set forth herein, that the vestibular testing, testing of the autonomic nervous system, and transcranial doppler studies were not medically necessary. As the services in dispute were determined not to be medically necessary based upon the peer review, the defense based upon the IME cut-off is moot. Applicant's claim is denied in its entirety.

**DECISION:** Based upon the foregoing, Applicant's claim is denied in its entirety. This award is in full disposition of all No-Fault benefit claims submitted to 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 Suffolk

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

09/13/2024  
(Dated)

Philip Wolf

**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:**  
a3bc315a8e72952bb7442468c3120102

### Electronically Signed

Your name: Philip Wolf  
Signed on: 09/13/2024