

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

St. Catherine of Siena Medical Center  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No.

Applicant's File No.

Insurer's Claim File No.

NAIC No.

17-24-1349-0420

BarriosDa

0665504585  
3W4

29688

**ARBITRATION AWARD**

I, Robyn McAllister, 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 09/05/2024  
Declared closed by the arbitrator on 09/05/2024

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

Steven Miranda, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,010.71**, 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

Whether Respondent properly denied Applicant's claim for providing the facility for the performance of a cervical epidural injection for Assignor (DB), a 27 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on April 11, 2022, based on a peer review by Dr. Michael Tawfello.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1010.71 for providing the facility for the performance of a cervical epidural injection on November 30, 2023 for Assignor (DB), a 27 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on April 11, 2022. Respondent timely denied Applicant's claim based on a peer review dated January 4, 2024 by Dr. Michael Tawfellos.

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim for the facility fee since the cervical injection was not medically necessary. I disagree. I was not persuaded by the peer review report by Dr. Tawfellos, submitted by Respondent in support of its denial.

In order to support a defense of lack of medical necessity, the respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." *See, Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Dist. 2014). It is the respondent's burden to demonstrate lack of medical necessity, which, if established, shifts the burden of persuasion to the applicant. *See Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006); *A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11<sup>th</sup> Dist. 2007).

Furthermore, a respondent's peer review must set forth more than just a conclusory or basic recitation of the expert's opinion. It is well-settled that a peer review is deficient when it fails to set forth the generally accepted medical practice and how the provider deviated from those standards. *See Elmont Open MRI & Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co.*, 23 Misc.3d 1110(A)(Dist. Ct. Nassau Co. 2009); *Nir v. Allstate*, 7 Misc.3d 544 (Civ. Ct. Kings Co. 2005).

Dr. Tawfellos noted that "The claimant received physical therapy from 6/1/2022 to 8/17/2022 in a total of 7 sessions for the cervical spine." He added that "The MRI report of the cervical spine dated 7/22/2022 revealed: Essentially normal MRI of the cervical spine. The MRI report of the cervical spine dated 8/30/2023 revealed: Straightening of the normal cervical lordosis. CS-CG: protruded central disc herniation impinging on the ventral thecal sac."

He further noted that "As per the report dated 11/8/2023 Eric Fanaee, M.D., the claimant had a complaint of neck pain rated as 8/10 on the pain scale. The pain was throbbing, shooting, and stabbing in nature and was aggravated by moving, lying down, and coughing. The pain was associated with numbness. Examination of the cervical spine revealed a decreased and painful range of motion. The diagnoses were cervical herniated disc and cervical radiculitis. Cervical epidural steroid injection was recommended."

Dr. Tawfellos stated that "The standard of care for Epidural Steroid Injections would begin with a reasonable trial of conservative treatment (exercises, physical methods, NSAIDs, and muscle relaxants). If the claimant is unresponsive to conservative treatment and has clinical evidence of a progressive neurological deficit, injections should be performed."

He argued that "In this case, the claimant was involved in the MVA on 4/11/2022 and sustained an injury to the neck. On 11/30/2023, the claimant underwent a cervical epidural steroid injection at the C7-T1 level. However, as per the available medical records, the claimant was not evaluated for cervical spine complaints from 8/18/2022 to 8/30/2023, for more than 1 year. There was also no evidence that the claimant received any conservative care for cervical spine pain in the above-mentioned period. Thus, the causal relationship between the cervical spine complaints and the MVA dated 4/11/2022 was not supported. Therefore, based on the available medical records, cervical epidural steroid injection performed was not medically necessary." Dr. Tawfellos concluded that since the injection was not medically necessary none of the associated services were necessary.

I find that Dr. Tawfellos peer review was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to rebut Dr. Tawfellos' assertions. *See A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., supra.*

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial report and procedure report by Dr. Eric Fanae, surgery center records and rebuttal to the peer review by Dr. Didier Demesmin. I was not persuaded by the medical evidence that the cervical epidural injection and associated facility fee were warranted.

Dr. Fanae examined Assignor for the first time on November 8, 2023, sixteen months after the motor vehicle accident. He noted subjective complaints of radiating neck pain to the left upper extremity and that a MRI performed on August 30, 2023 revealed a "disc herniation at C5-6 impinging the ventral thecal sac." He stated that Assignor's pain was related to the motor vehicle accident and was "refractory to physical therapy chiropractor time and the use of Tylenol and Motrin for the past several weeks she was referred for possible injection in the cervical spine."

Dr. Demesmin was not a treating physician and performed a records review. While he focused on Dr. Fanae's November 8, 2023 examination findings and August 30, 2023 MRI findings of a herniated disc, he failed to adequately address the gap in treatment for the cervical spine or that the post-accident MRI on July 22, 2022 noted "minimal bulging" without "no disc protrusion" and "normal" spinal cord and vertebrae" including stature and alignment.

Thus, I find that Dr. Demesmin's rebuttal failed to meaningfully rebut the conclusions set forth in the peer review report. *See High Quality Medical, P.C. v. Mercury Ins. Co.*, 26 Misc.3d 145(A) (App. Term 2d, 11<sup>th</sup> & 13<sup>th</sup> Dists. 2010).

After careful review of the evidence, I was persuaded by Dr. Tawfellos opinion that the gap in treatment to the cervical spine failed to support the necessity for a cervical epidural injection nineteen months after the accident. Therefore, I find that Applicant failed to satisfy his burden and that Respondent properly denied Applicant's claim.

Accordingly, Applicant's claim is denied 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 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 Westchester

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

09/14/2024  
(Dated)

Robyn McAllister

### **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:**  
6cb3095b00435b84df385ae1af52e8

### **Electronically Signed**

Your name: Robyn McAllister  
Signed on: 09/14/2024