

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RES Physical Medicine & Rehab Services  
(Applicant)

- and -

State National Insurance Company  
(Respondent)

AAA Case No. 17-24-1335-2717

Applicant's File No. 24-53356

Insurer's Claim File No. 8177-03

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Bernadette Connor, 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 08/15/2024  
Declared closed by the arbitrator on 08/15/2024

Applicant from The Morris Law Firm, P.C. participated by written submission for the Applicant

Robert Becker, Esq. from Ginsberg, Becker & Weaver, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,433.56**, 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 Assignor, a 77-year-old male, sustained injuries in a motor vehicle accident on March 20, 2023. Applicant seeks reimbursement for ligamentous injections, tendon injections, peripheral nerve injections, and ultrasonic guidance performed September 19, 2023 through October 17, 2023. Respondent denied payment based on a peer review report dated October 21, 2023, by Jason S. Lipetz, M.D. Respondent also asserted that Applicant's claim exceeded the fee schedule.

The issues to be determined are whether the injections provided to the Assignor herein were medically necessary and whether Respondent's fee schedule defense can be sustained.

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

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

Jason S. Lipetz, M.D., reviewed the medical records and concluded that the injections provided to the Assignor in this matter were not medically necessary. Dr. Lipetz opined that the use of the injections was excessive. He specifically indicated that "[t]here can be no justification for the performance of approximately 40 injections targeting multiple proposed pain generators in this case. In addition, in this case it is indicated that this excessive injection approach had been repeated with considerable frequency. This is clearly not demonstrative of the evidence-based standard of care." Dr. Lipetz further opined that trigger point injections are appropriately used when trigger points remain symptomatic despite an adequate course of conservative physical therapy. According to Dr. Lipetz, ultrasonic guidance was not medically necessary as routine myofascial injections are generally performed without the need for advanced image guidance support. "Such injections can be performed utilizing dedicated physical examination and palpation techniques alone."

Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See *Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 NY3d 498 (2015); *Westchester Med. Ctr. v. Progressive Cas. Ins. Co.*, 89 AD3d 1081, 933 NYS2d 719, 2011 NY Slip Op. 8747 (N.Y. App. Div. 2d Dept. 2011); *New York Hosp. Med. Ctr. of Queens v. QBE Ins. Corp.*, 114 AD3d 648, 979 NYS2d 694, 2014 NY Slip Op 639 (NY App. Div. 2d Dept.)

Once Applicant establishes a prima facie case of medical necessity, the burden shifts to Respondent to produce 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, 777 N.Y.S. 2d 241, 2004 NY Slip Op 20034 NY Slip Op 24034 [Civ. Ct. Kings County 2004].

I find that Dr. Lipetz has established a sufficient factual basis and medical rationale to rebut Applicant's prima facie case of medical necessity. See *Jacob Nir, M.D. Assignee of Josaphat Etienne v. Allstate Insurance Co.*, 796 N.Y.S2 857. "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling."

The burden now shifts to Applicant to refute Dr. Lipetz' peer review report and demonstrate that the disputed injections performed herein were medically necessary. See, *CPT Med Services, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 2007 New York Slip Op 27526, 18 Misc. 3d 87 (App Term 1 Dept.); 2008NY Slip Op; *Eden Med., P.C. v. Progressive Cas. Ins. Co.*, 51098 (U), 19 Misc.3d 143 (A) (App Term 2 & 11 Jud Dists., 2008); *Khodadadi Radiology v. New York Central*, 16 Misc. 3d 131 (A) (2020).

After carefully considering the evidence presented, I find in favor of Respondent. Applicant did not submit a rebuttal report or any evidence to refute Dr. Lipetz's peer review report and establish the medical necessity for the extensive injection therapy provided to the Assignor in this matter.

Accordingly, the claim is denied.

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 New York

I, Bernadette Connor, 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)

Bernadette Connor

### **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:**  
975f50bdc5187e47957b98067e3cc92d

### Electronically Signed

Your name: Bernadette Connor  
Signed on: 09/14/2024