

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Medalliance Medical Health Services  
(Applicant)

- and -

Mid-Century Insurance Company  
(Respondent)

AAA Case No. 17-24-1345-4970

Applicant's File No. 3234547

Insurer's Claim File No. 7006372432-1-3

NAIC No. 21687

**ARBITRATION AWARD**

I, Gerry Wendrovsky, 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 10/23/2024  
Declared closed by the arbitrator on 10/23/2024

Jessica Buscarino from Israel Purdy, LLP participated virtually for the Applicant

Lindbergh Hmung from Law Offices of Rothenberg & Romanek participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$604.56**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended its claim to \$523.54, in accordance with the fee schedule defense asserted by respondent.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP, MJ, a 52-year-old male was a bicyclist involved in a motor vehicle accident on 7/20/23. At issue is \$604.56 for therapy rendered 2/27/24 - 3/14/24. Respondent denied

the claim based on the report of the independent medical examination (IME) of Dr. Pierce Ferriter, dated 12/28/23; the effective date of the IME denial was 1/24/24. The question presented is whether the services were medically necessary.

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

This case has been decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. The hearing was conducted via Zoom. There were no witnesses. I have reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. This decision is in full disposition of the issues before me.

At the hearing, the applicant amended its claim to \$523.54, in accordance with the fee schedule defense asserted by respondent.

An applicant establishes its *prima facie* entitlement to reimbursement as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742 (2<sup>nd</sup> Dept., 2004). The applicant has submitted sufficient credible evidence to establish its *prima facie* case.

#### IME Report

A defense premised upon the results of an IME requires a factual basis and medical rationale be demonstrated for the conclusion that further services are not medically necessary. *AJS Chiropractic, PC v. Mercury Ins Co*, 22 Misc. 3d 133 (A) (App Term 2009); *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc. 3d 144(A) (App. Term 2008).

In his IME report, Dr. Ferriter, an orthopedist, identified the medical records reviewed, noted the EIP's complaints (neck, mid/low back, bilateral shoulder, left knee, right ankle/foot), and conducted a thorough examination of the EIP. There were no objective findings; diagnosis was "*resolved sprain/strain cervical/thoracic/lumbar spine, bilateral shoulder, left knee, right ankle/foot*".

I find the IME report is sufficient for respondent to meet its burden of proof on the issue of lack of medical necessity. *A. Khodadadi Radiology PC v. NY Central Mutual Fire Ins. Co.*, 2007 NY Slip Op 51342(U). The applicant now must meaningfully refer to, or rebut, the conclusions set forth in the IME report. *Ortho-Med Surgical Supply, Inc. v. Progressive Cas. Ins. Co.*, 2012 NY Slip Op 50149(U) (App Term 2012); *Yklik, Inc. v. Geico Ins. Co.*, 2010 NY Slip Op. 51336(U) (App Term 2010).

Applicant did not submit a specific rebuttal to the IME report; at the hearing, it argued there were sufficient contemporaneous medical records, namely SOAP notes (12/28/23, 1/2/24) and follow-up report (dated 1/19/24).

Upon review, I am persuaded by applicant on the issue of medical necessity, as the contemporaneous records supported the medical necessity for the further services.

### Conclusion

Applicant is awarded the amended sum of \$523.54.

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	Amount Amended	Status
	Medalliance Medical Health Services	03/12/24 - 03/12/24	\$119.58	\$108.96	Awarded: \$108.96
	Medalliance Medical Health	03/13/24 - 03/13/24	\$245.82	\$196.66	Awarded: \$196.66

	<b>Services</b>				
	<b>Medalliance Medical Health Services</b>	<b>02/27/24 - 03/14/24</b>	<b>\$239.16</b>	<b>\$217.92</b>	<b>Awarded: \$217.92</b>
<b>Total</b>			<b>\$604.56</b>		<b>Awarded: \$523.54</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 04/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Simple interest on the above awarded amount shall be computed and paid at a rate of 2% per month, commencing on the date the claim was filed in arbitration and ending with the date of payment of the award.

C. Attorney's Fees

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

Respondent shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6.

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 NY

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

11/11/2024  
(Dated)

Gerry Wendrovsky

### **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:**  
a8d64701b04a7efce1d3d93fe20e848c

### Electronically Signed

Your name: Gerry Wendrovsky  
Signed on: 11/11/2024