

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Harvey Levitan Medical, PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1312-3808

Applicant's File No. DK23-364054

Insurer's Claim File No. 0708448717

NAIC No. 29688

ARBITRATION AWARD

I, Anne Malone, 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 12/23/2024
Declared closed by the arbitrator on 12/23/2024

Constance Roland, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Dana Nolan, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$534.87**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$437.55 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 33 year old EIP reported involvement in a motor vehicle accident on March 31, 2023; claimed related injury and underwent ultrasound studies of the lumbar spine, bilateral shoulders, elbows and knees provided by the applicant on April 19, 2023.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based upon a peer review by Ayman Hadhoud, M.D. dated May 22, 2023. In response, the applicant submitted a rebuttal dated November 18, 2023 by Dr. Levitan who was one of the EIP's treating medical providers.

The issue to be determined at the hearing is whether the respondent established that the medical services at issue were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

In support of its contention that the medical services provided by the applicant were not medically necessary, respondent relies upon the report of the peer review by Dr. Hadhoud, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him. Dr. Hadhoud considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

He discussed the standard of care for ultrasound studies for each of the body parts involved in this claim and determined that they did not meet these criteria. He determined that the EIP had not received a full course of conservative treatment and therefore the ultrasound was premature and not medically necessary at the early stage in the EIP's management program.

In addition, Dr. Hadhoud noted that the initial evaluation of the EIP was conducted by Dr. Jurkovich and that the ultrasound studies were performed 5 days later.

It was his opinion that the ultrasound studies were ordered without regard to the EIP's actual needs.

Dr. Hadhoud supported, with relevant medical literature, his opinion that the ultrasound studies provided to the EIP were not medically necessary at the time they were provided.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the medical services at issue were not indicated for this EIP at the time they were provided. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish that the medical services at issue were medically necessary.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Levitan, who disagreed with the conclusions reached by Dr. Hadhoud who determined that the ultrasound studies were indicated and needed to be completed prior to undergoing further conservative treatment to determine the exact cause of the injuries before there was a deterioration of his condition.

Dr. Levitan discussed in detail the injuries sustained by the EIP and the treatment rendered to him during the 19 days post-accident before he was referred for the ultrasound studies at issue.

The peer review indicates that Dr. Levitan did not treat the EIP prior to performance of the ultrasound studies and the only records he reviewed was the report of the initial evaluation by Dr. Jurkovich 14 days post-accident, the referral and reports of the ultrasound studies, the bill and denial and peer review.

Dr. Levitan also supported, with relevant medical citations, his opinion that the medical services at issue were medically necessary to find the correct course of treatment for the EIP.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented in the peer review by Dr. Hadhoud and the rebuttal by Dr. Levitan on behalf of the applicant.

I find that the submission of Dr. Hadhoud was more persuasive in this instance.

Based on the foregoing, I find that the respondent established that the medical services at issue were not medically necessary.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before 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 CT

SS :

County of Fairfield

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

01/15/2025
(Dated)

Anne Malone

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:
f12b51922dd0658f218e3f32fcf31fcb

Electronically Signed

Your name: Anne Malone
Signed on: 01/15/2025