

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Midwood Surgical Supplies Inc  
(Applicant)

- and -

St. Paul Travelers Insurance Co.  
(Respondent)

AAA Case No. 17-24-1353-7148

Applicant's File No. n/a

Insurer's Claim File No. IWN-7901

NAIC No. 19070

**ARBITRATION AWARD**

I, Donna Ferrara, 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: Injured person YC.

1. Hearing(s) held on 01/14/2025  
Declared closed by the arbitrator on 01/14/2025

Robin Grumet, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)  
participated virtually for the Applicant

Gregory Broido, Esq. from Law Offices of Tina Newsome-Lee participated virtually for  
the Respondent

2. The amount claimed in the Arbitration Request, **\$1,581.97**, 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 dispute arises from the underlying motor vehicle accident of 1/19/24, wherein a 35 year old woman was injured. Applicant submitted the bill for Joint stimulator, knee orthosis, knee sleeve, knee brace, and cane for the injured person on date of service 3/15/24, to Respondent and Respondent denied payment based on the peer review of Marc Appel, M.D., dated 5/7/24, due to lack of medical necessity.

Accordingly, the issue to be determined is whether Respondent's defense of lack of medical necessity should be sustained.

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

I have reviewed the file regarding this matter contained in the Modria Center record of the case maintained by the American Arbitration Association. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

"[A] plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501, 14 N.Y.S.3d 283, 286 (2015).

Applicant's counsel argued that Dr. Appel does not discuss the medical goods.

Respondent's counsel argued that Respondent relies on the peer report.

Dr. Appel reviewed the injured person's medical records including treatment reports and diagnostic tests. He stated the records showed multiple DME's were provided without a medical reason. He opined the operation should be disallowed and that the operation should not be reimbursed nor any ancillary service. This includes all bills including the DME on 3/15/24. That was the extent of his discussion of the medical goods.

A peer reviewer must establish a factual basis and medical rationale for his asserted lack of medical necessity of the health care provider's services. See Amaze Medical Supply Inc. v. Allstate Ins. Co., 12 Misc.3d 142(A), 2006 N.Y. Slip Op. 51412(U) (App. Term 2d & 11th Dists. July 12, 2006); Prime Psychological Services, P.C. v. Progressive Casualty Ins. Co., 24 Misc.3d 1244(A), 2009 N.Y. Slip Op. 51868(U) at 3 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009). Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb.' " Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 2005 N.Y. Slip Op. 51282(U) at 3 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005).

I find that the peer review report did not establish a factual basis and medical rationale.

Consequently, the peer report fails to satisfy Respondent's initial burden in support of its defense of lack of medical necessity and causality.

I find that the peer review report does not satisfy Respondent's burden of establishing a factual and medical basis to deny this claim.

In the absence of a prima facie case of lack of medical necessity and lack of causality, the burden does not shift to Applicant.

This arbitrator previously ruled on the medical necessity of the left knee arthroscopy performed on 3/15/24 on the injured person herein in AAA case number 17-24-1350-0313, wherein I determined that Applicant rebutted the assertion by the peer doctor that since there was no complaint of immediate pain of the left knee in the ER it was impossible to have sustained a meniscal tear or ligament injury. In that decision I stated that the MRI of the left knee revealed heterogeneous signal seen anterior and posterior horn medial meniscus, which may represent tears and there were positive findings on exam and the pre-operative and post-operative findings were left knee medial meniscus tear and derangement. I found that the left knee arthroscopy was medically necessary.

Moreover, Master Arbitrator Frank Godson, in AAA case number 99-14-9050-6061, stated "Applicant appeals, citing decisions by Master Arbitrators Robyn D. Weisman, Victor J. D' Ammora and the late Norman H. Dachs, all of whom held, in situations similar to that at issue here, that the necessity of the post-operative treatment should be evaluated on its own merits, based on the patient's status as it existed at that time, unrelated to the necessity or lack thereof of the surgery that preceded it. I agree with their analyses."

In AAA case numbers 17-20-1187-2643 and 17-21-1205-2555, I found that the medical goods were not discussed in the peer report and that the burden of proof never shifted from Respondent to Applicant. I was affirmed on appeal by Master Arbitrator Robert Trestman on 1/3/22 and by Master Arbitrator Jonathan Hill on 7/19/22.

I find in favor of Applicant.

There were no fee schedule issues discussed at the hearing.

Accordingly, the arbitration claim is granted.

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	Status
	Midwood Surgical Supplies Inc	03/15/24 - 03/15/24	\$1,581.97	Awarded: \$1,581.97
Total			\$1,581.97	Awarded: \$1,581.97

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/26/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicants' award shall bear interest at a rate of two percent per month, calculated on a pro rata basis, 30 day month, from the date when payment became overdue, pursuant to 11 NYCRR 65- 3.9(a). Interest shall run from the filing date until the date of payment.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance regulation 68-D).

- 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 Suffolk

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

01/16/2025

(Dated)

Donna Ferrara

#### **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:**  
9ef018455f131188eefa0f91a9838c17

### **Electronically Signed**

Your name: Donna Ferrara  
Signed on: 01/16/2025