

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No. 17-24-1355-6504

Applicant's File No. AR24-24762

Insurer's Claim File No. 051297089

NAIC No. 36447

ARBITRATION AWARD

I, Lisa Abrams, 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: IP

1. Hearing(s) held on 01/15/2025
Declared closed by the arbitrator on 01/15/2025

Alek Beynenson from The Beynenson Law Firm, PC participated virtually for the Applicant

Herman Buchanan from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$269.12**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant has established its *prima facie* case and that Respondent timely denied Applicant's claim.

3. Summary of Issues in Dispute

This arbitration arises out of medical treatment for the IP (MAG), a 46-year-old male, related to injuries the IP sustained in a motor vehicle accident that occurred on October 6, 2022. Following the accident, the IP sought private medical attention. Applicant seeks reimbursement for physical therapy (PT) performed on behalf of the IP from November 1, 2023 through January 14, 2024. Respondent timely denied payment for the PT based

on an Independent Medical Examination (IME) conducted by Dr. Dorothy Scarpinato on January 13, 2023. The issue in dispute is whether the services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case decided based upon the submissions of the parties as contained in the electronic case file maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, as it does here, the burden shifts to the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. See, *A.B. Med. Servs. PLLC v. Geico Ins.*, 2 Misc.3d 26, 27 (App. Term 2003); *Kings Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767, 770 (Civ. Ct. Kings Co. 2004). An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co.*, 19 Misc.3d 1139(A) (Dist. Ct. Nassau Co. 2008); *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A) (App. Term 2008).

The IME conducted by Dr. Scarpinato on January 13, 2023, with an effective cutoff date of January 24, 2023, noted that the IP had complaints of pain in the neck, the left shoulder, and the left knee. However, Dr. Scarpinato concluded that there was no need for further orthopedic treatment.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. See, *Prince, Richardson on Evidence* §§ 3-104, 3-202 (Farrell 11th ed.); *Andrew Carothers, M.D., P.C. v. Geico Indem. Co.*, 18 Misc.3d 1147(A) (Civ. Ct. Kings Co. 2008); *W. Tremont Med. Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131(A) (App. Term 2006). Accordingly, the burden now shifts to Applicant who bears the ultimate burden of persuasion.

In support of its claim, Applicant relies on the medical record and, in particular, the multiple exams between the dates of December 8, 2022 and February 6, 2023, and the physical therapy progress notes. These exams note that the IP complained of neck, back, left shoulder and left knee pain with reduced ROM in these regions. The IP also underwent a cervical epidural steroid injection on December 8, 2022 due to pain and numbness. Furthermore, the pain management reports noted, among other things, tenderness in the cervical spine, diminished sensation in the left C5 and C6 dermatome, decreased reflexes in the left biceps and triceps, and positive Spurlings, Cervical Distraction, and extension and lateral rotations.

Comparing the relevant evidence presented by both parties against each other, I am persuaded by Applicant. The IP's clinical history evidenced subjective and objective findings which I find are sufficient to demonstrate the medical necessity for ongoing medical treatment. The purpose of the No-Fault law is to restore the IP to pre-accident status. Although Respondent notes that treatment is almost two years after the accident, I find Applicant's medical records credibly demonstrate a need for continued treatment to achieve that goal. Applicant's claims are granted.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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
	Brooklyn Medical Practice, PC	11/01/23 - 11/29/23	\$134.56	Awarded: \$134.56
	Brooklyn Medical Practice, PC	12/04/23 - 12/13/23	\$100.92	Awarded: \$100.92
	Brooklyn Medical Practice, PC	01/14/24 - 01/14/24	\$33.64	Awarded: \$33.64
Total			\$269.12	Awarded: \$269.12

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from the initiation date for this case until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty-day month.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. See, 11 NYCRR 65-4.6 (c) and (e). However, if the benefits and interest awarded thereon are equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b). For cases filed after February 4, 2015, there is no minimum fee and a maximum fee of \$1,360.00.

- 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 Nassau

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

01/18/2025
(Dated)

Lisa Abrams

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:
1335ed313bc7f4364df954b45a5d39e5

Electronically Signed

Your name: Lisa Abrams
Signed on: 01/18/2025