

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Surgicore Of Jersey City, LLC  
(Applicant)

- and -

Allstate Property and Casualty Insurance  
Company  
(Respondent)

AAA Case No. 17-24-1363-0459

Applicant's File No. n/a

Insurer's Claim File No. 0693741241  
2FM

NAIC No. 17230

### **ARBITRATION AWARD**

I, Frank Marotta, 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-AO-P

1. Hearing(s) held on 01/07/2025  
Declared closed by the arbitrator on 01/07/2025

Robert Cippitelli, Esq. from Jakubowitz Law Firm PC participated virtually for the Applicant

Marilyn Oppedisano, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,213.98**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate and agree that the Applicant established its prima facie burden, and the Respondent timely denied the claim in question.

3. Summary of Issues in Dispute

The record reveals that the Assignor-AO-P, a 35-year-old-female, sustained injuries in a motor vehicle accident on 11/20/22.

The Applicant seeks reimbursement for an ambulatory facility fee in connection with L3-L5 and sacral ala lumbar medical branch block (LMMB) injections performed by Dr. Jahanbakhsh on 6/4/24.

Respondent provides a general denial dated 8/28/23 terminating further orthopedic, physical therapy, massage therapy, PM&R, pain management and prescription medication effective 9/1/23 based on a medical examination (IME) conducted by Dr. Joseph Margulies on 8/16/23 and thereafter a claim specific denial for the services based on the IME findings.

The issue is whether the LMMB injections were medically necessary.

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

The Applicant filed this arbitration in the amount of \$3,213.98 for a disputed fee in connection with LMMB injections performed by Dr. Jahanbakhsh on 6/4/24.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

The Respondent denied reimbursement asserting the LMMB injections were not medically necessary. To deny a claim based on a lack of medical necessity the insurer must present medical evidence which sets forth with sufficient particularity the factual basis and medical rationale underlying that determination. Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 12 Misc. 3d 133(A), 2006 NY Slip Op 51185(U) (App Term 2d Dept. 9th and 10th Jud Dist. June 8, 2006). See also A. B. Med. Servs. PLLC v Liberty Mut. Ins. Co., 10 Misc 3d 128(A), 2005 NY Slip Op 51902 (U) (App Term, 2d & 11th Jud Dists); Amaze Med. Supply v Allstate Ins. Co., 2004 NY Slip Op 24119, 3 Misc3d 43, 44 [App Term, 2d & 11th Jud Dists 2004]. Such evidence can take the form of a "*peer review or any other proof, such as an independent medical examination, setting forth a sufficiently detailed factual basis and medical rationale for the claim's rejection, e.g. Choicenet Chiropractic P.C. v Allstate Ins. Co., NYLJ, Mar. 7, 2003 (App Term, 2d & 11th Jud Dists)*" Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2003 NY Slip Op 51701(U) (NY App. Term 2003); see also Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp., 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

In support of its defense Respondent relies on an IME conducted by Dr. Joseph Margulies on 8/16/23. Dr. Margulies provides a history of the Assignor as a 35-year-old female who was involved in a motor vehicle accident on 11/20/22 as the driver of a car. Dr. Margulies notes that the Assignor sustained injuries to her neck, back, and left shoulder. The Assignor was seen at a hospital where she was examined and released the same day. She subsequently started physical therapy and chiropractic care 2 times a week which Dr. Margulies notes is continuing at the time of his IME. Dr. Margulies notes that the Assignor underwent left shoulder arthroscopy on 5/18/23. At the time of the IME Dr. Margulies reports that the Assignor is somewhat better but reported complaints of neck, back, and left shoulder pain. She noted a difficulty with bending and sitting.

On examination motor strength, sensation to light touch, and deep tendon reflexes were within normal limits throughout the upper and lower limbs. There was full cervical range of motion with no evidence of spasm or tenderness to palpation. Foraminal compression and Soto Hall tests were negative. Examination of the lumbar spine revealed normal range of motion in all directions with no evidence of spasm or tenderness to palpation of the paraspinal musculature. Dr. Margules reports that the Assignor was able to walk well on tiptoes and heels. SLR test as normal. On examination of the shoulders there were normal ranges of motion. Dr. Margulies notes that the Assignor was able to maintain abduction against resistance and was nontender to palpation over the shoulders and the acromio-clavicular joints. There were negative apprehensions and impingement signs, and the shoulders were symmetrical.

The Respondent met its prima facie burden of proof establishing that the post-IME services in question was not medically necessary with the IME report of Dr. Margulies who performed an examination of the Assignor's cervical and lumbar spine as well as her bilateral shoulders and diagnosed the Assignor with a cervical sprain-resolved, left shoulder status post arthroscopy-resolved and lumbar sprain-resolved based on his findings. As to the need for treatment Dr. Margulies notes, from an orthopedic standpoint, there is no need for further treatment including physical therapy, massage therapy, surgical intervention, injections, prescription medication, diagnostic testing, special transportation, household help or durable medical equipment. In an addendum dated 8/21/24 Dr. Margulies reviewed additional medical records and opined that after his exam and review of the additional records there is no objective findings to support further treatment. Under such circumstances I find Dr. Margulies set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

When a Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant who must then present its own evidence of medical necessity and prove, by a preponderance of the evidence, that the service in issue was medically necessary. Friedman v. Allstate Ins. Co., 2016 NY Slip Op 50390(U) (App Term 2d, 11th & 13th Jud Dists. March 18, 2016); Alfa Medical Supplies v. Geico General Ins. Co., 2013 NY Slip Op 50064(U), 38 Misc. 3d 134(A)

(App. Term, 2d, 11th and 13th Jud Dists 2013); West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) at 2 (App. Term 2d & 11th Dists. Sept. 29, 2006).

In support of its claim the Applicant provides a progress report by Dr. Jahanbakhsh dated **7/10/23** noting that the patient presented with chief complaints of neck and low back pain that began on 11/20/22. On examination of the cervical spine there was evidence of myofascial trigger points as well as cervical rigidity/spasm with decreased range of motion due to pain. Deep tendon reflexes in the arms are 2+ throughout and equal bilaterally. Sensation was normal bilaterally. Motor strength, bulk and tone are normal in the arms bilaterally. The Foraminal compression test was negative. On examination of the lumbar spine there was a positive testing for facet joint tenderness bilaterally. The lumbar examination showed significant palpable paraspinal spasm and paraspinal tenderness. There was decreased range of motion in the lumbar spine due to pain. No focal motor deficits were noted. The sensory examination was within normal limits bilaterally. Deep Tendon Reflexes in the legs are 2+ throughout and equal bilaterally. SLR was negative. Patrick's test was negative. Sacroiliac joint tenderness was negative. Facet Loading test was positive, bilaterally. Dr. Jahanbakhsh notes that the patient presents for evaluation of persistent neck and low back pain after motor vehicle accident. Since the accident, functional status is reduced. She reports difficulty with ADLs. Both neck pain and low back pain are predominantly confined to the axial spine and consistent with acceleration/deceleration injury, typically seen in whiplash. Primary pain generator is the lumbar spine. MRI imaging of the cervical and lumbar spines was reviewed. Results were discussed with the patient. EMG results were reviewed. Treatment results were discussed. The patient has had extensive conservative care with physical therapy and chiropractic manipulation with limited sustained relief. She reports no sustained relief with oral medications. Given persistent axial low back pain, we will request to proceed with bilateral L3-5 and sacral ala lumbar medial branch blocks. Risks and benefits of the procedure were discussed. The diagnostic nature of injections was explained. The patient should continue physical therapy and chiropractic manipulation in conjunction with interventional treatments. Follow up after injections.

The Applicant provides an operative report dated 10/13/23 noting that performance of the LMBB injections at L3-L5 and sacroiliac spine with a pre and post procedure diagnosis of lumbosacral spondylosis.

The Applicant also provides a progress note by Dr. Jahanbakhsh dated 5/14/24 noting that the Assignor presented with a chief complaint of low back pain. Her last visit was reported to be on 11/06/23 post LMBBs on 10/13/23 with the duration of the effect of the injection lasting for 6 months. The patient reports a 70% reduction in LBP since the LMBBs but pain has returned today. The pain began on the day of the accident with no prior history of neck or back pain/injury. On examination of the lumbar spine there was significant muscle spasm. Lumbar range of motion was decreased in flexion due to pain. No focal motor deficits were noted. The sensory examination of the bilateral lower extremities were normal in the bilateral lower extremities. Deep tendon reflexes (DTRs) in the legs are 2+ throughout and equal bilaterally. Dr. Jahanbakhsh notes that the patient returns for a follow-up with pain and symptoms that are improving. *The patient continues to describe low back pain.* Functional status is improving. The patient has had

prior LMBBs with diagnostic and therapeutic relief. Given persistent axial low back pain despite extensive conservative care and prior diagnostic blocks, we will request to repeat the bilateral L3-5 and sacral ala diagnostic lumbar medial branch blocks. The LMBB were scheduled with a follow up two weeks after.

In addition to the above the Applicant provides an MRI report of the lumbar spine performed on 1/16/23 as well as an NCV & EMG study performed by Dr. Cristian Enescu at Hudson Pro Orthopaedics & Sports Medicine on 4/21/23 noting that the electrodiagnostic studies of the lower extremities revealed evidence of right radiculopathy of the L4-5 and bilateral L5-S1.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find that the Applicant's records are sufficient to overcome the IME finding and opinion of Dr. Margulies. The records of Dr. Jahanbakhsh are sufficient to demonstrate that the Assignor had persistent axial low back pain despite extensive conservative care with physical therapy and chiropractic manipulation resulting in the performance of the initial LMBB injections for which the Assignor reported six months of relief.

The records further reveal that despite the 70% improvement in the pain with the initial LMBB injections the pain did return, and the Assignor sought a follow up. The follow up examination of 5/14/24 was positive for continued low back pain and a positive facet loading test. Given the return of the pain and the positive facet loading test a Dr. Jahanbakhsh determined that a second series of LMBB injections should be performed to resolve and/or identify the pain generator. The Applicant record indicates the findings of continued axial low back pain that began following the accident. Based on the record I find the Applicant's ambulatory facility services were medically necessary.

For the reasons noted above the Applicant is awarded its claim as billed as the Respondent did not provide any proof that the Applicant's charges exceed the applicable fee schedule. First Aid Occupational Therapy, PLLC v. Country-Wide Ins. Co., 26 Misc.3d 135(A), 907 N.Y.S.2d 100 (Table), 2010 N.Y. Slip Op. 50149 (U), 2010 WL 376835 (App. Term 2d, 11th & 13th Dists. Jan. 29, 2010); Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dept, per curiam, 2006).

The Applicant is awarded \$3,213.98.

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
	<b>Surgicore Of Jersey City, LLC</b>	<b>06/04/24 - 06/04/24</b>	<b>\$3,213.98</b>	<b>Awarded: \$3,213.98</b>
<b>Total</b>			<b>\$3,213.98</b>	<b>Awarded: \$3,213.98</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 08/30/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall pay interest at a rate of 2% per month, calculated on a pro rata basis using 30-day month and in compliance with 11 NYCRR §65-3.9. Interest shall begin to accrue from the date of filing with the American Arbitration Association and end on the date the award is paid.

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850." Id. The minimum attorney fee that shall be

awarded is \$60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360." 11 NYCRR 65-4.6(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, Frank Marotta, 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)

Frank Marotta

#### **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:**  
adc5a8f375bdcb5ce5986059f4a1f5ce

**Electronically Signed**

Your name: Frank Marotta  
Signed on: 01/18/2025