

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

5th Avenue Wellness Medicine PC  
(Applicant)

- and -

Allstate Indemnity Company  
(Respondent)

AAA Case No. 17-24-1330-9192

Applicant's File No. BT23-261002

Insurer's Claim File No. 0707249942  
2PU

NAIC No. 19240

**ARBITRATION AWARD**

I, Nicholas Tafuri, 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 (JFC/JF)

1. Hearing(s) held on 01/09/2025  
Declared closed by the arbitrator on 02/01/2025

Heather Landeros, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

Adva White, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$8,923.46**, 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

EIP (JFC/JF), a 29-year old female, was involved in a motor vehicle accident on March 21, 2023. Following the accident, EIP sought medical treatment. A cervical discectomy is performed by Dr. Metul Shah on October 5, 2023.

Applicant's reimbursement claims were denied by Respondent based on an Independent Medical Examination ("IME") by Douglas Unis, M.D.,

conducted on August 15, 2023, and a peer review by Julio Westerband, M.D., dated November 7, 2023. Respondent also asserts a fee schedule defense.

The issues presented: Whether Applicant is entitled to no-fault reimbursement for health services denied based on an IME and a peer review? Whether Respondent's fee schedule defense is sustainable?

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

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives.

The hearing in this case was conducted on January 9, 2025. Due to the recent submission by Respondent of a coder affidavit by Carolyn Mallory, CPC, Applicant was afforded additional time to upload contrary documentary evidence. Accordingly, Applicant's submission of January 10, 2025, is accepted for consideration.

EIP (JFC/JF), a 29-year old female, was involved in a motor vehicle accident on March 21, 2023. Following the accident, EIP sought medical treatment. A cervical discectomy is performed by Dr. Metul Shah on October 5, 2023.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document, documenting the facts and amounts of the losses sustained, and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find Applicant establishes a prima facie case. The burden then shifts to the Respondent to prove its defenses. Applicant's denial is timely.

Applicant's reimbursement claims were denied by Respondent based on an Independent Medical Examination ("IME") by Douglas Unis, M.D., conducted on August 15, 2023, and a peer review by Julio Westerband, M.D., dated November 7, 2023.

### MEDICAL NECESSITY

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. Allstate Ins. Co., 61 A.D. 3d 13 (2d Dep't. 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't. 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d Dep't. 2008).

#### IME: Douglas Unis, M.D.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008).

In support of its medical necessity defense, Respondent relies upon the IME by Douglas Unis, M.D., conducted on August 15, 2023. The examination of EIP's cervical, thoracic, and lumbar spine revealed no tenderness, no muscle spasms, and no restrictions in ranges of motion. Cervical compression and straight leg raise test are negative. Neurological examination of the upper and lower extremities is normal. Bilateral shoulder exam revealed no tenderness, no crepitus, and normal ranges of motion. Orthopedic testing is negative. The exam of EIP's elbows, wrists/hands, knees, hips, ankles/feet was normal. Dr. Unis diagnosis EIP with resolved strains and sprains of the cervical, thoracic, and lumbar spine, and bilateral shoulders. Dr. Unis concludes that EIP has no disability, and there is no need for further physical therapy, injections, surgery, or orthopedic follow-up.

#### Peer Review: Julio Westerband, M.D.

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); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 Slip Op 50137(U) (N.Y. City Civ. Ct. 2012.) "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

In support of its contention that the cervical discectomy was not medically necessary, Respondent basis its defense on a peer review report by Julio Westerland, M.D., dated 11/7/23. Dr. Westerland notes that EIP's accident occurred on 3/21/23, and she commenced physical therapy on 3/29/23. A cervical spine MRI on 4/14/23 revealed a posterior disc bulge impinging of the thecal sac at C6-7. A 5/1/23 evaluation by Dr. Shah revealed tenderness and reduced range of motion in the cervical spine with a positive foraminal compression test. The neurological exam was normal. The 5/16/23 EMG/NCV of the upper extremities revealed no evidence of cervical radiculopathy. On 6/8/23, a cervical epidural steroid injection was administered by Dr. Shah. On 8/15/23 an IME by Dr. Unis revealed EIP with no positive objective findings. On 10/5/23 Dr. Shah performed a cervical discectomy. Dr. Westerland reports that following the 5/1/23 evaluation by Dr. Shah, there is no follow up evaluation report by Dr. Shah recommending cervical spine surgery. It is unclear why the surgery was performed. The EMG/NCV was negative for cervical spine radiculopathy, and the MRI failed to reveal evidence of a disc herniation displacing, compressing, or impinging on any nerve root or cord. Citing medical authority, Dr. Westerland avers that the indications for a cervical discectomy were not present here, i.e., cervical spine instability, radiculopathy, myelopathy, osteomyelitis, spondylosis, tumors, kyphosis. Based on all of the foregoing, Dr. Westerland concludes that the cervical spine discectomy was not medically necessary.

I find that Respondent has set forth a cogent medical rationale in support of its defense that the multiple DME items provided were not medically necessary.

Where a Respondent meets its burden, it becomes incumbent on the claimant to rebut the peer review. Be Well Medical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 139(A), 2008 WL 506180 (App.

Term 2d & 11th Dists. Feb. 21, 2008); A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131(A), 2007 WL 1989432 (App. Term 2d & 11th Dists July 3, 2007).

In response to the IME report by Dr. Unis, and the peer review by Dr. Westerland, Applicant relies on submitted medical records, and a rebuttal by Aristide Burdecea, D.O., dated 12/5/24. With respect to the IME by Dr. Unis, Dr. Burdecea notes that EIP presented with neck pain. The physical exam revealed decreased range of motion and tenderness, which calls into question the findings by Dr. Unis. In disagreeing with the peer review, Dr. Burdecea avers that EIP was an ideal candidate for a cervical discectomy. EIP complained of neck pain with radiation, and therefore, it was entirely likely that EIP possessed cervical radiculopathy secondary to a disc pathology. In addition, EIP's clinical exams revealed a positive Foraminal Compression test indicating that there was radiculopathy. Dr. Burdecea further reports that there is a vast body of peer-reviewed literature indicating that surgical intervention in cases of radiculopathy secondary to disc disease is a standard and efficacious treatment option. Dr. Burdecea concludes that based on EIP's clinical picture and cited journal studies, the surgical intervention was clearly medically necessary.

After a review of the reports and the medical records included on the ADR Center and consideration of the arguments advanced by representatives for both parties, I find the peer report persuasive as Dr. Westerland sets forth a sufficiently detailed factual basis and medical rationale to successfully establish lack of medical necessity for the cervical discectomy. I am not persuaded by Dr. Burdecea's argument that based on EIP's subjective complaints "...it was entirely likely that EIP possessed cervical radiculopathy". Significantly, as noted by the peer reviewer, the EMG/NCV was negative for cervical spine radiculopathy, and the MRI failed to reveal evidence of a disc herniation displacing, compressing, or impinging on any nerve root or cord. In addition, it is noted that EIP's surgeon, Dr. Shah, conducted an initial evaluation on 5/1/23. The rebuttal provides no explanation for the absence of a follow up evaluation by Dr. Shah to establish the medical necessity for the operative procedure, prior to the cervical spine surgery conducted on 10/5/23. Therefore, I find that the rebuttal fails to successfully challenge or refute the opinion of the peer reviewer, and I find the weight of the evidence favors the Respondent.

Accordingly, Applicant's reimbursement claim, for date of service 10/5/23, is denied.

Respondent's remaining defenses based on the IME by Dr. Unis, and the fee schedule, are rendered moot based on the foregoing award.

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 NY

SS :

County of Nassau

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

02/04/2025  
(Dated)

Nicholas Tafuri

**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:**  
fec5db5dcf07616494f929ab27f51eab

### **Electronically Signed**

Your name: Nicholas Tafuri  
Signed on: 02/04/2025