

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Multiwave Diagnostic Inc
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1312-7135

Applicant's File No. DK23-364053

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 01/22/2025
Declared closed by the arbitrator on 01/22/2025

Henry Guindi, Esq. from Korsunskiy Legal Group, 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, **\$1,345.84**, 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 32 year old EIP reported involvement in a motor vehicle accident on March 31, 2023; claimed related injury and underwent ultrasound of the lumbar spine, bilateral shoulder, knees and elbows provided by the applicant on April 19, 2023.

The applicant submitted a claim for the technical component 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 December 15, 2024 by Drora Hirsch, M.D. who was not one of the EIP's treating medical providers.

The respondent also asserted a fee schedule defense.

The issues to be determined at the hearing are:

Whether the respondent established that the medical services at issue were not medically necessary.

Whether the respondent established its fee schedule defense.

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 specifically noted that the standard of care for ordering ultrasound studies should be conservative care including physical therapy or appropriate exercise program for 4 to 6 weeks. If a patient fails to respond and there is no clear diagnosis MRI studies or ultrasound would be reasonable.

However, the EIP had not received a full course of conservative treatment, there was no documented fracture or failure to respond to any conservative treatment and no presentation of a differential diagnosis to warrant conducting these studies.

Therefore, Dr. Hadhoud determined that it was premature to perform the ultrasound studies for this particular EIP 19 days after the subject accident and 5 days after the initial evaluation.

Based on the medical records reviewed, it was Dr. Hadhoud's opinion that in this case the ultrasound studies were ordered regardless of the EIP's actual medical needs.

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

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. Hirsch, who reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Hadhoud and discussed in detail the general benefits and usefulness of ultrasound studies. It was her opinion that great deference should be given to the treating provider regarding the course of treatment for each particular patient.

Dr. Hirsch supported, with relevant medical citations, her opinion that generally ultrasound studies are a necessary tool for the treatment of injuries such as those sustained by the EIP.

She stated, without any specific reference to the peer review report, that nowhere did Dr. Hadhoud indicate how the performance of the ultrasound imaging in this case deviated from any standards of care or provided any specific protocol regarding when a patient should undergo these studies.

Based on the foregoing, the applicant did not submit a rebuttal which meaningfully refers to and rebuts the findings of Dr. Hadhoud. In addition, the medical reports submitted do not contradict his assertions.

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. Hirsch on behalf of the applicant.

In this instance, Dr. Hirsch did not submit a rebuttal which meaningfully refers to and rebuts the findings of Dr. Hadhoud. In addition, the medical reports submitted do not contradict his assertions.

Based on the foregoing, I find that the respondent established that the ultrasound studies at issue were not medically necessary at the time they were provided.

Under these circumstances, the fee schedule issue is moot.

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.

02/05/2025
(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:
7d048b1bf7277ffbc22d50326b5158f7

Electronically Signed

Your name: Anne Malone
Signed on: 02/05/2025