

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pain Physicians NY PLLC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1351-3396

Applicant's File No. TLD24-1074788

Insurer's Claim File No. 0720750546
PRG

NAIC No. 29688

ARBITRATION AWARD

I, Michael Rosenberger, 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: claimant

1. Hearing(s) held on 02/18/2025
Declared closed by the arbitrator on 02/18/2025

Kurt Lundgren from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Tom Cooke from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,043.94**, 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 claimant is a 24-year-old male involved in a motor vehicle accident on November 30, 2023. Following the accident claimant suffered injuries which resulted in the claimant seeking treatment. Thereafter, the claimant attended an IME performed by Aruna Seneviratne, MD on November 30, 2023, and treatment was terminated. The question presented is whether further treatment was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

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 determination that there was a lack of medical necessity for the services rendered." See, *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 20140. 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 generally, *Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. *Amherst Medical Supply, LLC v. A Central Ins. Co.*, 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity.

In support of its contention further treatment was not medically necessary respondent relies upon the examination report of Aruna Seneviratne, MD. The reports noted no decreased range of motion, no tenderness or spasm. All objective testing including *inter alia*: Cervical Compression, SLR and Hawkin's Test were negative. The patient was diagnosed with resolved injuries.

A review of the examination report reveals all tests were objectively negative and unremarkable as indicated by respondent. The results of the examination presented a cogent medical rationale as to why further benefits were terminated. Although there were some minor subjective findings, these are outweighed by the negative objective findings. Based upon the foregoing, respondent has set forth a cogent medical rationale in support of its defense.

Respondent has factually demonstrated the services rendered were not medically necessary. Accordingly, the burden now shifts to applicant, who bears the ultimate burden of persuasion. See, *Bronx Expert*, *supra*.

In opposition to the examination report, applicant relies upon an examination dated February 8, 2024 - three months after the IME. The exams paint a different clinical picture than that of Dr. Seneviratne. The patient presented with the following subjective complaints: low back pain, tenderness, spasm, and decreased range of motion. The patient also presented positive for the following provocative tests: SLR. The records demonstrated the claimant was suffering from a continuing injury.

Upon a review of the credible evidence, the IME is refuted by the records presented herein, which established the patient was still diagnosed with myalgia, radiculopathy and intervertebral disc disorder. Based upon the detailed exam report submitted, applicant has met the burden of persuasion in rebuttal and established continued treatment was medically necessary.

Accordingly, an award shall be issued in favor of applicant.

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
	Pain Physicians NY PLLC	02/08/24 - 02/08/24	\$127.41	Awarded: \$127.41
	Pain Physicians NY PLLC	02/24/24 - 02/24/24	\$916.53	Awarded: \$916.53
Total			\$1,043.94	Awarded: \$1,043.94

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim

becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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 NASSAU

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

03/04/2025
(Dated)

Michael Rosenberger

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:
44f04f7635fd5594fbf4ac9f9622d802

Electronically Signed

Your name: Michael Rosenberger
Signed on: 03/04/2025