

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a  
East Tremont Medical Center  
(Applicant)

- and -

LM General Insurance Company  
(Respondent)

AAA Case No.	17-24-1359-2376
Applicant's File No.	TLD24-1079462
Insurer's Claim File No.	0550798140001
NAIC No.	36447

**ARBITRATION AWARD**

I, Richard Kokel, 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 02/11/2025  
Declared closed by the arbitrator on 02/11/2025

Kurt Lundgren from Demetrios A. Bothos, Esq. participated virtually for the Applicant

Michelle Crismali from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$207.97**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to the services at issue. They also stipulated that Respondent's NF-10 denial of claim form was timely issued, i.e., within the 30-day limitation period identified in Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1).

The Respondent further stipulated that they had no issue with the fees billed by the Applicant, i.e., they did not have a fee schedule defense.

3. Summary of Issues in Dispute

The issue is whether health care services were medically necessary to treat the EIP, a 27-year-old male, with respect to injuries he sustained in an October 11, 2023 motor vehicle accident. The Respondent contended that the services at issue were not necessary. The support for this view was an Independent Medical Examination conducted on April 23, 2024, by Dr. Stuart Hershon, M.D.

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

The below noted decision was based upon my review of the evidence submitted by each party, along with the oral argument of the representatives present at the hearing. All evidence submitted herein is contained within the Case Management system maintained by the American Arbitration Association. Any issue(s) that may be contained in the evidentiary record that was not specifically raised at the time of the hearing, is considered to be moot and/or waived by the undersigned Arbitrator.

The Applicant commenced this proceeding to recover assigned first party No-Fault benefits with respect to the cost of anesthesia services provided on May 28, 2024. The anesthesia services were provided in conjunction with a Platelet Rich Plasma (PRP) injection performed on this date to the EIP's left knee. The Applicant is seeking their facility fee (the injection and related procedures were performed at the Applicant's ambulatory surgical center).

The PRP injection, and the anesthesia services, were medically necessary to help treat injuries the EIP, a 27-year-old male, sustained in an October 11, 2023 motor vehicle accident.

The Respondent disagreed and in a timely served denial stated:

*Based upon a Orthopaedic Independent Medical Examination conducted by Stuart Hershon, M.D. of \_\_\_\_\_ (the EIP) on 04/23/2024, no further Orthopaedic treatment is necessary effective 05/07/2024. Dr. Stuart Hershon, M.D. determined, the claimant is fully recovered and there is no treatment plan to promote Therefore, all further Orthopedic treatment, surgery, physical therapy, massage therapy, injections, diagnostic testing, prescription medication, household help, special transportation, lost wages, other necessary expenses and durable medical equipment are denied effective 05/07/2024.*

The Respondent bears the burden to prove that the services were not medically necessary (see A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App.Term 2nd and 11th Jud. Dists. 2004)).

Dr. Hershon reported that the EIP was a restrained driver of a vehicle that was involved in an accident with another vehicle. The EIP reported current complaints (at the time of the Independent Medical Examination) of pain in his lower back that radiates into his legs and of pain in his left knee. The EIP also reported that his initial complaints included pain in his neck, lower back and left knee.

Dr. Hershon then examined the EIP's cervical spine, thoracolumbar spine, bilateral shoulders, bilateral elbows, bilateral wrists/hands, bilateral hips, bilateral knees and bilateral ankles/feet. The EIP's medical records were also reviewed, which included MRI of the cervical spine, lumbar spine and left knee. The examination findings were normal in all respects. Complaints of tenderness were not made by the EIP and no muscle spasm, crepitus or instability in any examined region were identified. An extensive number of orthopedic tests were performed, and all were negative, as was the neurological portion of the exam. Regarding the left knee, he noted that McMurray's and Drawer tests were negative. Ranges of motion were unrestricted in all examined regions.

Based on the exam, Dr. Hershon diagnosed the EIP with resolved sprains/strains to his cervical spine, lumbar spine and left knee. The EIP was deemed to be able to perform all activities of daily living without restriction.

I find that the Independent Medical Examination was comprehensive and reliable. The findings noted therein were predicated upon a sufficient factual basis and medical rationale (see AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 50208(U), 22 Misc 3d 133(A), App Term, 2nd Dept (2009) and Alur Med Supply, Inc. v. Countrywide Ins. Co., 2008 NY Slip Op 51234(U), 20 Misc 3d 126(A), App Term, 2nd Dept (2008).

However, I also find that the Applicant proved by a preponderance of the evidence that the anesthesia and injection services were medically necessary (see Yklik, Inc. v GEICO Ins. Co., 2010 NY Slip Op 51336(U) [28 Misc 3d 133(A)] App. Term 2d Dept. (2010).

The Applicant submitted the same medical evidence reviewed by Dr. Hershon along with a comprehensive examination of the EIP by his treating physician. This exam was conducted on May 1, 2024. This examination identified significant restrictions to ranges of motion in the EIP's lumbar spine and left knee. Positive testing was also reported, i.e., SLR, Spurling's, Patrick, Kemp, McMurray's and Apley Compression. The Applicant also argued that the EIP's left knee MRI revealed an ACL sprain as well as a tear to the quadriceps tendon and a peripheral tear of the medial meniscus. I also note that Dr. Hershon, despite his diagnoses, stated that the EIP had not reached pre-accident status (see 'Disability' section of the Independent Medical Examination report).

Based on the foregoing, the Respondent's defense has not been sustained. The Applicant's claim is thereby awarded.

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>Uptown Healthcare Management Inc d/b/a East Tremont Medical Center</b>	<b>05/28/24 - 05/28/24</b>	<b>\$207.97</b>	<b>Awarded: \$207.97</b>
<b>Total</b>			<b>\$207.97</b>	<b>Awarded: \$207.97</b>

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

Interest shall be computed from August 8, 2024, the date the request for arbitration was filed with the American Arbitration Association, at a rate of 2% per month, calculated on a pro rata basis using a 30 day month, and ending with the date of payment of the award subject to the provisions of 11 NYCRR 65-3.9(e).

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum total of the awarded claim plus interest, subject to a maximum of \$1,360 (see 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 New York

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

03/11/2025

(Dated)

Richard Kokel

#### **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:**  
57902696a9eda57d0656268d21f148b8

### **Electronically Signed**

Your name: Richard Kokel  
Signed on: 03/11/2025