

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Multi-Specialty Pain Management PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-24-1369-4978

Applicant's File No. 3350352

Insurer's Claim File No. 0730626157
2DA

NAIC No. 19232

ARBITRATION AWARD

I,Carolynn Terrell-Nieves, 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 03/05/2025
Declared closed by the arbitrator on 03/05/2025

Stacy Mandel Kaplan,Esq., from Israel Purdy, LLP participated virtually for the Applicant

Dana Goodman,Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$364.44**, 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

In contention is Applicant's bill reflecting its reimbursement requests of \$364.44 in connection with physical therapy provided on 8/1/24 thru 8/8/24 relative to a 47 year old male as a driver who was involved in a motor vehicle accident on September 27, 2023. The claim was denied based on an IME performed by Dr. Stuart Hershon dated 2/27/24. Benefits terminated 3/25/24.

Whether the Respondent properly denied the Applicants claim based on the IME of Dr. Hershon.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file with regard to this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

The applicant established a prima facie case of entitlement to reimbursement of its claims by the submission of a completed NF-3 form 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).

History

The claimant is a 47-year-old male who was involved in a motor vehicle accident on 9/27/2023 as a restrained driver of the vehicle. It was a rear-end collision. The claimant sustained injuries to the neck, mid-back, and lower back. Following the accident, the claimant went to the emergency department, where he was evaluated and treated, and released.

As per the office visit report dated 10/3/2023 by Shyam A. Patel, M.D., the claimant had a complaint of neck pain.

The claimant was evaluated by Farhana Ahmed, D.O. on 10/23/2023 for a complaint of neck pain. The pain was aggravated by daily living activities. The past medical and surgical history was non-contributory. Examination of the cervical spine revealed bilateral paracervical and trapezius tenderness as well as spasms. Trigger points were noted. The range of motion was decreased. Spurling's test was positive. The diagnoses were cervical strain/sprain and cervical radiculopathy. An MRI of the cervical spine was ordered.

The MRI report of the cervical spine dated 10/23/2023 revealed: Straightening of cervical lordosis. At C3-C4: Broad-based left lateralizing disc herniation effacing the ventral thecal sac and mildly narrowing the left neural foramen. At C4-C5: Broad-based left lateralizing disc herniation with uncinete hypertrophy effacing the ventral thecal sac and resulting in moderate left and mild right-sided neural foraminal narrowing. At C5-C6: Broad-based central disc herniation mildly narrowing the spinal canal and mildly narrowing the neural foramen. At C6-C7: Broad-based left lateralizing disc herniation effacing the ventral thecal sac and moderately narrowing the left neural foramen. ICD 10- Disc herniation C4-C5, C5C6, C6-C7.

The X-ray report of the cervical spine dated 10/23/2023 revealed: Mild C5-C6 and C6-C7 degenerative changes. Abnormal straightening cervical curve.

The claimant was evaluated by Brian Haftel, M.D. on 11/6/2023 for a complaint of neck pain. The pain was said to be aggravated by daily living activities. Examination of the cervical spine revealed bilateral paracervical and trapezius tenderness as well as spasms.

Trigger points were noted. The range of motion was decreased. Spurling's test was positive. The diagnoses were cervical strain/sprain and cervical radiculopathy. An MRI of the cervical spine was reviewed. EMG/NCV studies were ordered. Extracorporeal shock wave therapy was recommended. Conservative treatment was advised.

IME

Dr. Hershon has reviewed the medical reports and determined that the claimant's sprains and strains had resolved. During the IME, the claimant complained of pain in his neck, mid back, upper back, lower back, and left leg. Claimant also reports numbness/tingling.

The examination was unremarkable. The ranges of motion were within normal limits, the orthopedic tests were negative and the claimant was noted to be neurologically intact. Therefore, the examiner determined that the claimant's sprains and strains had resolved and there was no need for any additional conservative care or diagnostic testing. He further determined that There is no need for orthopedic treatment or physical therapy treatment to the cervical spine, thoracic spine, lumbar spine and left knee. There were no objective findings such as but not limited to muscle spasm, atrophy, instability, and/or positive objective testing to correlate with the subjective complaints to cervical spine, thoracic spine, lumbar spine and left knee. All ranges of motion were within normal limits. An end result has been reached from an orthopedic treatment.

There is no necessity for prescription medications, ambulette services, diagnostic testing, massage therapy, household help, injections, special transportation, durable medical supplies or surgery.

In the event that an insurer relies on a peer review report or independent medical examination to demonstrate that a particular service was medically unnecessary, the medical expert's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. In addition, the expert's opinion must be supported by evidence of generally accepted medical/professional practice or standards. *Nir v. Allstate Insurance Company*, 7 Misc3d 544, 2005 N.Y. Slip Op. 25090 (N.Y. Civ. Ct. Kings Co. 2005). 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. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. *CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co.*, 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. Kings Co. 2004).; *Yink Eastern Acupuncture, P.C. v. Global Liberty Insurance Company*, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App. Term 2nd and 11th Jud. Dists. 2008).

I find the IME report in this case is cogent, credible and convincing. I find the Respondent has met its initial burden to establish lack of medical necessity because this IME report has set forth a standard of care and demonstrated how the treating provider

deviated from that standard. Therefore, the burden now shifts to the Applicant to present evidence that meaningfully addresses the IME and demonstrates the medical necessity for the disputed services.

I find Applicant has failed to submit medical reports sufficient to dispute the convincing and thorough IME reports findings that no further treatment is warranted subsequent to the IMEs termination of benefits.

The Applicant's claim is hereby denied.

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

03/31/2025
(Dated)

Carolynn Terrell-Nieves

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:
7a8ad77eb92c90264f9a9c75a8a7f8ac

Electronically Signed

Your name: Carolynn Terrell-Nieves
Signed on: 03/31/2025