

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Doctors United Inc  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No.	17-24-1371-0100
Applicant's File No.	3357801
Insurer's Claim File No.	32-52J2-03D
NAIC No.	25178

**ARBITRATION AWARD**

I, Victor Moritz, 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: IP

1. Hearing(s) held on 03/20/2025  
Declared closed by the arbitrator on 03/20/2025

Jennifer Howard, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Monica Bradley from State Farm Mutual Automobile Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$436.49**, 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 applicant seeks reimbursement for the cost of medical services provided to the IP (L.M. 56-year-old female) from August 8-13, 2024, relative to an Independent Medical Evaluation (IME) performed by Dr. Vijay Sidhwani, D.O., on May 1, 2024. There were no fee schedule issues raised at this hearing. This matter is determined after reviewing the submissions and presentations of both sides. I have reviewed the documents contained in the electronic case folder as of the closing of the file. The hearing was held on Zoom.

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

**I find for the applicant and award \$436.49 for the cost of the services at issue.**

##### **Submissions**

The services at issue were denied based on Dr. Sidhwani's IME. The narrative noted the history of the IP's motor vehicle accident. As a result, the IP was taken initially to Montefiore Hospital for injuries to the head, shoulders, and neck. Thereafter, she began conservative treatment, which included physical therapy, chiropractic care, and pain management treatments. The IP was taking Tylenol, 500 milligrams, two times a day, and she used the medication prior to this examination. Various medical records were reviewed by Dr. Sidhwani, including July 2023 X-rays of the cervical spine, revealing a loss of lordosis due to spasm, as well as mild degenerative changes. A head CT scan from July 3, 2023 revealed no evidence of fractures. There was chronic encephalomalacia, reflecting a prior left MCA territory infarct.

The evaluation revealed a normal gait and no atrophy with normal neurological findings, including deep tendon reflexes and sensory evaluations. Range of motion for the shoulders was within normal limits in all planes bilaterally, and various orthopedic test findings were negative. The evaluation of the cervical spine revealed full range of motion without tenderness or spasms and negative orthopedic test results. The impressions were bilateral shoulder sprains, resolved, and cervical sprain, strain, resolved. Dr. Sidhwani concluded that the injuries sustained were only partially caused by the vehicle accident, and the IP had a prior degenerative disc disease, which was exacerbated by this accident. Given the findings herein, there was no need for any further pain management treatment, physical medicine rehabilitation treatment, or physical therapy for this patient. The shoulder injuries had reached a therapeutic endpoint for treatment, as her injury to her neck.

To refute these findings, the applicant has submitted medical treatment notes and narratives that predate, are contemporaneous with, and postdate the IME.

Most pertinent, I note an April 12, 2024 evaluation indicating neck pain was worsening and radiating to the right biceps and right forearm, described as sharp and exacerbated by movement, and with tingling sensations noted. The evaluation of the cervical spine revealed active trigger points on the upper trapezius and periscapular region, and levator scapulae, producing twitch response to pressure, creating a pattern of referred pain. Motor strength was reduced on the left side at the deltoids, biceps, and brachioradialis. Sensory evaluation revealed decreased response to pin prick and cold at the C6 dermatome. Deep tendon reflexes were reduced at the triceps and biceps on the right side. The Spurling test was positive. The IP's assessment included cervical radiculopathy, and continued treatment was recommended. Also under consideration were cervical epidural injections.

Positive findings continued through the remainder of April, with assessment reports and treatment notes including on May 1, 2024, the date of the IME and continuing through August 2024.

The findings included the IP was continuing to complain of neck and middle back pain, fluctuating in intensity, positive findings, including tenderness and tightness in the cervical muscles, with trigger points in the bilateral rhomboids and additional care being provided.

### **Legal Standards for Determining Medical Necessity**

It is well settled that an applicant established its prima facie entitlement to payment by proving it submitted a claim set forth the facts and the amount of the loss sustained and that payment of no-fault benefits were overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Countrywide Ins. Co. v. 563 Grand Medical PC 50 A.D. 3d. 313 (1<sup>st</sup> Dept., 2008); Sunshine Imaging Assoc./WNY MRI v. Geico. Ins. Co., 66 A.D. 3d. 1419 (4<sup>th</sup> Dept., 2009). A facially valid claim is presented when it sets forth the name of the patient; date of accident; date of the services; description of services rendered and the charges for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1<sup>st</sup> Dist. Ct. Nass. Co.1996). The applicant has met this burden.

When evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

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. Dept., 2009), See also Channel Chiropractic PC v. Country Wide Ins. Co. 38 AD 3d. 294 (1<sup>st</sup> Dept., 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. Dept., 2008). In evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

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). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A),

(App. Term 2d & 11th Dist. Feb. 9, 2002), as the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994); Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 4 (App. Term 2d & 11th Dists. Sept. 29, 2006). The case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts. Moreover, the Appellate Term, 2d, 11th & 13th Dists., recently stated: "Assuming the insurer is successful in satisfying its burden, it is ultimately plaintiff who must prove, by a preponderance of the evidence, that the services or supplies were medically necessary." Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 (App. Term 2d, 11th & 13th Dists. 2012).

### **Application of Legal Standards**

I note the validity of denials based upon negative IME findings have been recognized by several Courts. See, e.g., Innovative Chiropractics P.C. v. Mercury Ins. Co., 25 Misc3d 137 (App. Term 2d & 11th Dists. 2009); B.Y. M.D., P.C. v. Progressive Casualty Ins. Co., 26 Misc3d 125 (App. Term 9th & 10th Dists. 2010). An IME report can be the basis of a termination of benefits if ultimately found to be persuasive. Whether an IME report is persuasive, and meets the carrier's burden is a factual decision, which must be rendered on a case-by-case basis.

In the instant matter, I find for the applicant and award reimbursement for the services at issue.

I acknowledge the IP was approximately one year post-accident, continuing to be treated for neck and shoulder pain, specifically neck pain. While the IME has provided the dates the IP's condition had resolved, Dr. Sidhwani notes the IP had a degenerative disc disease and indicates that an asymptomatic condition appears to have been exacerbated by this accident. Therefore, there is no issue with coverage being afforded.

Further, while the analysis provided by the IME physician is a resolved condition, the IP remained symptomatic and in pain, and this is buttressed by comprehensive SOAP notes with not just subjective complaints of pain noted, but objective findings on examination, which are relevant and contemporaneous with the IMEs. The provider's submission sufficiently refutes the IME physician's determination that the IP's condition had been resolved. It appears the IP remained symptomatic; therefore, the treating practitioner found additional care warranted.

Under these circumstances, I find the submissions sufficient to establish the need for additional care and a nexus to the motor vehicle accident and to refute the IME's determination that no further care was warranted.

**Accordingly, the applicant is awarded \$436.49.**

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
	Doctors United Inc	08/09/24 - 08/13/24	\$232.46	Awarded: \$232.46
	Doctors United Inc	08/08/24 - 08/08/24	\$87.80	Awarded: \$87.80
	Doctors United Inc	08/08/24 - 08/08/24	\$116.23	Awarded: \$116.23
Total			\$436.49	Awarded: \$436.49

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/23/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay interest at a rate of two percent per month, simple on a pro rata basis using a thirty day month. With respect to the claim herein, interest will run from October 23, 2024, the date of the filing of this claim through payment of the claim.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with promulgated 11 NYCRR 65-4.6(d).

With respect to this claim, the applicant is entitled to attorney's fees for the medical services provided to the IP for which the applicant is awarded the sum of \$436.49.

- 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 Westchester

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

04/03/2025  
(Dated)

Victor Moritz

**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:**  
1e6d12148ca9bbbed3406e902a34208b5

### Electronically Signed

Your name: Victor Moritz  
Signed on: 04/03/2025