

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a
ETM- ASC Ambulatory Surgery Center of
East Tremont
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No.	17-24-1369-2925
Applicant's File No.	TLD24-1084212
Insurer's Claim File No.	0744929258 2SJ
NAIC No.	29688

ARBITRATION AWARD

I, Michelle Murphy-Louden, 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 04/10/2025
Declared closed by the arbitrator on 04/10/2025

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

Peggy Gizzarelli, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$14,527.43**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$3,026.24 in accordance with the Fee Schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 40 year old male EIP was reportedly involved in a motor vehicle accident on January 31, 2024, as a driver.

The issue presented is whether Applicant is entitled to reimbursement for a facility fee in connection with a left shoulder arthroscopy performed on August 22, 2024, as the result of the January 31, 2024, motor vehicle accident.

Respondent denied reimbursement based upon a September 19, 2024, peer review of Stuart Springer, M.D.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

4. Findings, Conclusions, and Basis Therefor

The 40 year old EIP was reportedly involved in a motor vehicle accident on January 31, 2024, when the vehicle in which he was the restrained driver was hit on the right side.

According to the records submitted, on April 1, 2024, the EIP underwent a left shoulder MRI which was the impression of anteroinferior labral tear.

On July 30, 2024, the EIP presented for initial orthopedic evaluation with Danilo Sotelo-Garza, M.D., reportedly complaining of 7/10 intermittent left shoulder pain associated with stiffness and weakness worse with range of motion. The EIP reported 6 months of physical therapy with little relief. Examination of the left shoulder reportedly revealed palpable tenderness, crepitus, positive orthopedic tests, and decreased range of motion in all planes. Dr. Sotelo-Garza diagnosed the EIP with left shoulder internal derangement, labral tear, pain, injury, and joint effusion and recommended an arthroscopy which was subsequently performed on August 22, 2024.

The following medical records summary is reproduced in relevant part from the History section of the peer review at issue in this matter as Respondent did not submit these medical records into evidence:

...The emergency department report dated 1/31/2024 from New York-Presbyterian Queens Hospital was made available for my review. As per this report, the claimant had complaints of pain in the neck and left shoulder.

...As per the initial physical therapy evaluation report dated 2/1/2024 from Kinetic Approach Physical Therapy, P.C., the claimant was advised physical therapy 3-4 times a week for 4 weeks.

As per the initial acupuncture treatment report dated 2/2/2024 Ji Acupuncture, P.C., the claimant was advised acupuncture treatment 2-3 times a week.

The claimant received acupuncture treatment for the left shoulder from 2/2/2024 to 6/21/2024 in a total of 9 sessions. The reports were made available for my review.

As per the initial comprehensive medical examination report dated 2/8/2024 from VLI Medical, P.C., the claimant had a complaint of left shoulder pain. The past medical and surgical history was non-contributory. Examination of the left shoulder revealed tenderness over the trapezius. The diagnosis was left shoulder contusion. Conservative treatment was advised. Pain medications were prescribed.

The claimant received extracorporeal shockwave therapy for the left shoulder on 2/8/2024 and 5/23/2024.

The claimant received physical therapy for the left shoulder from 3/1/2024 to 8/1/2024 in a total of 20 sessions. The reports were made available for my review.

The follow-up reports from 3/7/2024 to 7/18/2024 from VLI Medical, P.C., were made available for my review. As per these reports, the claimant had a complaint of left shoulder pain.

The claimant was evaluated on 5/20/2024 by Valeria Loukanova-Ivanov, M.D. for a complaint of left shoulder pain. The pain was aggravated by movements. Examination of the left shoulder revealed a painful range of motion. Physical therapy was advised.

PEER REVIEW

On September 19, 2024, Stuart Springer, M.D., performed a peer review of the left shoulder arthroscopy which he concluded was not medically necessary. Dr. Springer opined in relevant part:

The standard of care for the symptomatic shoulder after a motor vehicle accident would be a trial of conservative treatment with various modalities of physical therapy and acupuncture, applied for several months. In addition, if the claimant demonstrated persistent pain, which would be characterized as non-responsive to different types of therapy, including painkillers and intensive physical therapy, an operative procedure might be considered after several months.

In regards to the left shoulder arthroscopy, the following should be noted:

Link/Source:

<https://orthoinfo.aaos.org/en/diseases--conditions/slap-tears/>

As per the article, **2019 George S. Athwal, MD, Matthew D. Budge, MD, FAAOS, AAOS, SLAP Tears, Treatment:** "Nonsurgical Treatment: In most cases, the initial treatment for a superior labrum anterior to posterior injury is nonsurgical.

- o Nonsteroidal anti-inflammatory medication
- o Physical therapy: Exercises to strengthen the muscles that support your shoulder can relieve pain and prevent further injury. This exercise program can be continued anywhere from 3 to 6 months and usually involves working with a qualified physical therapist.
- o Surgical Treatment: Your doctor may recommend surgery if your pain does not improve with nonsurgical methods."

In this case, the claimant was involved in a motor vehicle accident on 1/31/2024 and had a complaint of left shoulder pain. Left shoulder arthroscopy with debridement was performed on 8/22/2024. As per the article, the doctor may offer surgery as an option for a torn rotator cuff if the pain does not improve with nonsurgical methods. As per the medical records, the claimant was advised physical therapy 3-4 times a week for 4 weeks. However, the claimant received 23 sessions of conservative care in the form of physical therapy from 3/1/2024 to 8/19/2024 for the left shoulder and 9 sessions in the

form of acupuncture treatment from 2/2/2024 to 6/21/2024. The received conservative treatment was inconsistent. The MRI report of the left shoulder did not reveal an irreversible pathological condition or full-thickness tear to warrant the immediate need for surgery. The claimant should have received adequate and consistent sessions of conservative treatment in the form of physical therapy, a home exercise program, strengthening exercises, acupuncture treatment, occupational therapy, and activity modifications followed by steroid injections to resolve the pain. Hence, based on the above-cited article and available medical records, the left shoulder surgery performed on 8/22/2024 was not medically necessary.

Based upon Dr. Springer's opinion, Respondent denied Applicant's claim.

ANALYSIS

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). . Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut., 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Springer's peer review fails to set forth a clear factual basis and a medical rationale for Respondent's denial of Applicant's claim for the left shoulder arthroscopy in dispute herein and as such I find that Respondent has failed to establish a lack of medical necessity for same.

Dr. Springer stated that the standard of care for a post-accident shoulder injury would initially be a trial of conservative treatment with physical therapy, home exercise program, strengthening exercises, acupuncture, occupational therapy, and activity modification followed by steroid injections. The medical article cited by Dr. Springer states that physical therapy should be undertaken for 3-6 months. Both Dr. Springer and the cited medical article stated that surgery might be recommended if the pain did not improve with conservative treatment. According to Dr. Springer, the medical records he reviewed showed that the EIP underwent physical therapy 20 times over a 6 month time period, acupuncture 9 times over a 5 month time period, and extracorporeal shockwave therapy twice. According to the records submitted, on July 30, 2024, the EIP complained to Dr. Sotelo-Garza of 7/10 left shoulder pain associated with stiffness and weakness unrelieved by conservative treatment.

With respect to Dr. Springer's contention that the left shoulder MRI did not reveal an irreversible pathological condition or full-thickness tear to warrant surgery, as noted above both Dr. Springer and the medical article he cited stated that surgery might be recommended if the pain did not improve with conservative treatment which is documented in Dr. Sotelo-Garza's examination report.

Therefore, based upon the foregoing, I am unable to find as persuasive Dr. Springer's opinion that there was not adequate medical justification for the left shoulder arthroscopy in dispute and as such Respondent's denial cannot be upheld.

With respect to the amount of interest awarded Applicant herein, pursuant to 11 N.Y.C.R.R. §65-3.9(c) if an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken.

Per advisement of the Department of Financial Services, the date on which an applicant is deemed to have requested arbitration is the date on which the applicant's request for arbitration was received by AAA.

In this case, according to AAA's electronic case file Applicant's request for arbitration was received via e-mail by AAA on October 11, 2024.

CPLR §2103(b)(2) provides that "where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period if the mailing is made within the state". Pursuant to the foregoing provision, Respondent's denial will be deemed to have been received by Applicant five days after the specified date of said denial.

Therefore, as Applicant's claim was denied by Respondent on September 19, 2024, it is determined that Applicant requested arbitration less than 30 days after receipt of Respondent's denial. As such, it is found that the payment of interest was not tolled with respect to Applicant's claim pursuant to 11 N.Y.C.R.R. §65-3.9(c) and therefore Applicant is entitled to the payment of interest from September 19, 2024, to the date of the payment of this Award calculated in accordance with 11 N.Y.C.R.R. §65-3.9(a).

ACCORDINGLY, APPLICANT IS AWARDED THE AMOUNT OF \$3,026.24 TOGETHER WITH INTEREST, ATTORNEY'S FEE, AND FILING FEE AS SET FORTH BELOW.

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	Amount Amended	Status
	Uptown Healthcare Management Inc d/b/a ETM- ASC Ambulatory Surgery Center of East Tremont	08/22/24 - 08/22/24	\$14,527.43	\$3,026.24	Awarded: \$3,026.24
Total			\$14,527.43		Awarded: \$3,026.24

B. The insurer shall also compute and pay the applicant interest set forth below. 09/19/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to 11 N.Y.C.R.R. §65-3.9(a), the insurer shall calculate interest at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month.

Pursuant to 11 N.Y.C.R.R. §65-3.9(c), if an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken.

Since Applicant herein did not request arbitration within 30 days of receipt of the denial of claim form, Respondent shall pay interest from the date the arbitration was commenced as set forth above to the date of payment of the Award in accordance with 11 N.Y.C.R.R. §65-3.9(c).

C. Attorney's Fees

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

The insurer shall pay the Applicant an attorney's fee in accordance with 11 N.Y.C.R.R. §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 Saratoga

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

04/16/2025
(Dated)

Michelle Murphy-Louden

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:
b66721585d03e6127226fdef2a2bb232

Electronically Signed

Your name: Michelle Murphy-Louden
Signed on: 04/16/2025