

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kcaid Pharmacy Inc DBA Preferred Pharmacy (Applicant)	AAA Case No.	17-24-1369-0970
	Applicant's File No.	none
- and -	Insurer's Claim File No.	0749563291 2YC
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Paul Keenan, 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: ASSSIGNOR DS

1. Hearing(s) held on 04/16/2025
Declared closed by the arbitrator on 04/16/2025

Rajesh Barua, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Angela Venetsanos, Esq. from Law Offices of John Trop participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$1,080.00**, 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

ASSIGNOR, a 61-year-old male, was injured as a driver in a motor vehicle accident (MVA) March 24, 2024. He presented to Diyora Mirsaidova, P.A. April 2, 2024 with complaints of pain in the neck, upper, mid and lower back, left shoulder and left knee. Treatment plan included physical therapy and prescribed medication including lidocaine 5% ointment. At follow-up evaluation with PA Mirsaidova June 20, 2024 treatment plan included physical therapy and prescribed medication including lidocaine 5% ointment which was dispensed on June 21, 2024.

At issue is payment for MEDX-Patch/Lidocaine being provided provided June 28, 2024. Respondent denied payment based on the following:

AS PER THE REVIEW OF MEDICAL NECESSITY CONDUCTED BY HAROLD A. SCHECHTER, M.D. ON 8/3/24, THE SERVICES REVIEWED ARE NOT MEDICALLY NECESSARY AND YOUR BILL HAS BEEN DENIED. VENDOR: D&D ASSOCIATES 22724023518. IN ADDITION TO THE FOREGOING REASON FOR DENIAL, THE AMOUNT CHARGED AND SOUGHT TO BE REIMBURSED EXCEEDS THE AMOUNT PERMITTED UNDER THE APPLICABLE NY WORKERS COMPENSATION BOARD SCHEDULE OF MEDICAL FEES, SCHEDULE OF MEDICAL FEE AND/OR REGULATION 68, APPENDIX 17-C.

Records reviewed by Dr. Schechter included previous peer reviews, prescriptions, medical, psychological, physical therapy and acupuncture evaluations and notes, EMG/NCV and SSR testing

4. Findings, Conclusions, and Basis Therefor

Submissions are available through ADR filings.

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Records reviewed by Dr. Schechter included previous peer reviews, prescriptions, medical, psychological, physical therapy and acupuncture evaluations and notes, EMG/NCV and SSR testing. Dr. Schechter discussed "HISTORY" and wrote, in pertinent part:

There is a prescription, from Dr. Peacock, dated 6/26/2024 for 1ST MEDX PATCHES/Lidocaine, which is a combination medication consisting of lidocaine, capsaicin, menthol, and methylsalicyate - with lidocaine being the chief ingredient. This medication was delivered on 6/27/2024. The prescription made no mention on why it was prescribed, especially considering that the claimant had been provided just week earlier with lidocaine ointment, diclofenac gel, celecoxib, and methocarbamol. Please note that there was no mention of an evaluation performed by Dr. Peacock, at the time that this medication was prescribed.

...

It was also noted in the American College of Occupational entitled and Environmental Medicine Guideline Non-Invasive and Minimally Invasive Management of Low Back Disorders (Volume 62, Number 3, March 2020) that "However, a moderate quality trial suggests lack of efficacy, and thus lidocaine patches are Not Recommended." It was also noted in this guideline in regard capsaicin, menthol, to the and methylsalicyate components of this MEDX PATCH, compounds that "These may also be used in these patients who prefer topical treatments over oral and treatments other more efficacious treatments". The Guideline also states that "The Use of Topical NSAIDS or other creams and ointments for treatment of acute, subacute, or chronic LBP pain have no recommendation".

...

It was also noted in the New York State Workers' Compensation Guidelines Board Medical Treatment (May 2, 2022), that "Topical Lidocaine is only indicated when there is documentation of a diagnosis of neuropathic pain" - which was not noted in this case.

To establish entitlement to No-Fault benefits, applicant is required to submit proof that respondent timely received its properly completed claim forms and the claim was not paid. See *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D. 3d 742; 774 N.Y.S.2d 564; 2004 N.Y. App.Div. LEXIS 3597 (2nd Dept. 2004); *Amaze Medical Supply a/a/o Bermudez v. Eagle Insurance*, 2 Misc. 3d 128[A], 784 N.Y.S.2d 918 (2003)). The burden then shifts to respondent to present admissible evidence demonstrating the existence of material issue(s) of fact in support of its basis for dement.

In the matter of *Jacob Nir, M.D. v. Allstate*, Civil Court of the State of New York, Kings County, 796 N.Y.S.2d 857, the Court held that a peer review based on a doctor citing only a review of medical provider's medical reports as the basis for his peer review report and not physically examining the patient before writing the peer review report or citing medical authority, standard or generally accepted medical practice as a rationale for his findings, is a conclusory peer review and insufficient to refute applicant's prima facie documentation.

Where respondent insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to provider to present its own evidence of medical necessity (See Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11 ed] th West Tremont Medical Diagnostic P.C. v Geico Ins. Co. 13Misc. 3d 131(A), 824 N.Y.S.2d 759 (Table), 2006 WL2829826 (App. Term 2d & 11 Dists. Sept 29, 2006).

Applicant has failed to provide a rebuttal to Dr. Schechter's peer review. It is applicant's position that Dr. Schechter's peer review fails to establish a lack of medical necessity; is insufficient to shift the burden to applicant to present evidence of medical necessity.

Dr. Schechter bases the peer review, with citation to authority, on lack of evidence of efficacy of lidocaine patch in musculoskeletal injuries; as well as the prescribed MEDX PATCHES/Lidocaine being provided pursuant to prescription by Dr. Peacock one week after ASSIGNOR was provided lidocaine patch pursuant to prescription by PA Mirsaidova.

Dr. Schechter has established lack of medical necessity and applicant has failed to provide documentation in rebuttal.

Denial based on this peer review is sustained.

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

04/22/2025
(Dated)

Paul Keenan

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:
b2bafa7ee89a2ae8e682b3315b564b85

Electronically Signed

Your name: Paul Keenan
Signed on: 04/22/2025