

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

North Shore University Hospital (NSUH) ,
North Shore LIJ Medical PC
(Applicant)

- and -

| | |
|--------------------------|-----------------|
| AAA Case No. | 17-24-1363-9087 |
| Applicant's File No. | RFAMUL24-2362 |
| Insurer's Claim File No. | 0725305940 ZRP |
| NAIC No. | 29688 |

Allstate Fire & Casualty Insurance Company
(Respondent)

ARBITRATION AWARD

I, Anne Malone, 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 03/31/2025
Declared closed by the arbitrator on 03/31/2025

Philip Kim, Esq. from Horn Wright, LLP participated virtually for the Applicant

Jeff Winston, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$7,861.32**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,629.54 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 66 year old EIP reported involvement in a motor vehicle accident on August 11, 2023; claimed related injury and underwent recovery room services at the applicant's (NSUH) facility and lumbar epidural steroid injection (LESI) provided by applicant North Shore LIJ on December 15, 2023.

The applicants submitted claims for these medical services which included separate billing for NSUH and NSLIJ a facility fee and physician fee, payment of which was timely denied by the respondent based upon a peer review by Stuart Springer, M.D. dated January 23, 2024.

The issue to be determined at the hearing is whether the respondent established that the medical services and facility fee at issue were not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the medical services provided by the applicant were not medically necessary, respondent relies upon the report of the peer review by Dr. Springer, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to her. Dr. Springer considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

Dr. Springer submitted a comprehensive report in which he discussed the medical services provided and his reasons for determining that they were not medically necessary for this EIP. He discussed the standard of care for the injuries sustained by the EIP and determined that she did not meet these criteria.

Dr. Springer determined that a LESI is indicated if pain has not responded to at least four weeks of appropriate conservative treatment unless there is evidence of radiculopathy, in which case epidural steroid injection could be performed after two weeks of conservative care.

Dr. Springer noted that the available medical records indicate that the EIP did not receive any form of conservative treatment for the lumbar spine after the subject accident. In addition, there was no evidence of disc pathology to warrant epidural steroid injection.

He supported, with relevant medical literature, his opinion that the LESI and facility services provided to the EIP were not medically necessary.

Respondent has factually demonstrated that the services at issue were not medically necessary. Accordingly, the burden now shifts to the applicant, which bears the ultimate burden of persuasion, pursuant to Bronx Expert Radiology, P.C., supra.

The applicants did not submit a formal rebuttal. However, the applicants contend that the peer review was insufficient to shift the burden to the applicant and also rely upon the submissions, including evaluations of the EIP by Dr. Suratwala on September 20, 2023 and November 20, 2023 which documented complaints of pain in the lumbar spine with no tenderness noted over the cervical, thoracic and lumbar spine or in the upper or lower extremities. Also noted were negative Hoffman's sign and straight leg raise.

The lumbar MRI studies documented various disc bulges at levels of the lumbar spine. Dr. Suratwala noted degenerative changes throughout the spine and discussed the option of LESI for back pain. The LESI was performed on December 15 2023.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered were medically necessary. Conflicting opinions have been presented in the peer review by Dr. Springer and the reports of Dr. Suratwala, the EIP's treating medical provider.

In this instance, the findings of Dr. Suratwala and the medical reports submitted are sufficient to establish medical necessity for the services at issue.

Based on the foregoing, I find that the respondent has failed to establish that the services at issue were not medically necessary.

Accordingly, the applicant is awarded \$1,629.54 in disposition of this claim.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 |
|---------|--|---------------------|--------------|----------------|---------------------|
| | North Shore University Hospital (NSUH) | 12/15/23 - 12/15/23 | \$7,690.00 | \$1,458.22 | Awarded: \$1,458.22 |
| | North Shore LIJ Medical PC | 12/15/23 - 12/15/23 | \$171.32 | \$171.32 | Awarded: \$171.32 |
| Total | | | \$7,861.32 | | Awarded: \$1,629.54 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/05/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. 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 CT

SS :

County of Fairfield

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

04/29/2025

(Dated)

Anne Malone

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:
2972a0c72482001da7a12799d6b37622

Electronically Signed

Your name: Anne Malone
Signed on: 04/29/2025