

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

United Pharmacy NYC Inc.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1355-8251

Applicant's File No. 23-0901

Insurer's Claim File No. 0734170186

NAIC No. 29688

ARBITRATION AWARD

I, Mitchell Lustig, 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: Assignor

1. Hearing(s) held on 04/28/2025
Declared closed by the arbitrator on 04/28/2025

Peter Coritsidis, Esq. from The Bangiyev Law Firm PLLC participated virtually for the Applicant

Brian Korman, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,869.10**, 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 dispute is Applicant United Pharmacy NYC Inc.'s claim as the assignee of 25-year-old female injured in a motor vehicle accident on October 30, 2023, for reimbursement in the sum of \$2,869.10 for prescription medication, naproxen/esomeprazole (\$2,680.78) and cyclobenzaprine (\$188.32) dispensed to the Assignor on November 10, 2023.

The prescription medication was prescribed by Dr. Shai Bikel, NP after examining the Assignor on November 8, 2023.

The Respondent denied the claim based upon a peer review report by Dr. Isandr Dumesh dated December 5, 2023. (In his peer review report, Dr. Dumesh stated that the cyclobenzaprine was medically necessary). Thus, the issue presented for my determination is whether the Respondent has proved that the naproxen/esomeprazole dispensed to the Assignor was not medically necessary.

In addition, the Respondent asserted that the Applicant billed in excess of the fee schedule

4. Findings, Conclusions, and Basis Therefor

It is well settled that a health care provider establishes its prima facie entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2nd Dept. 2009). I find that the Applicant has established a prima facie case.

Upon proof of a prima facie case by the applicant, the burden shifts to the insurer to prove that the services were not medically necessary. A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App. Term 2d and 11th Jud. Dists. 2004).

WHETHER NAPROXEN/ESOMEPRAZOLE WAS MEDICALLY NECESSARY

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 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).; Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance Company, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (A) (App. Term 2nd and 11th Jud. Dists. 2008).

In his peer review report dated December 5, 2023, Dr. Dumesh noted that Esomeprazole represents a PPI medication (Porton Pump Inhibitor) and acts as an inhibitor of gastric acid production. According to Dr. Dumesh, it may be prescribed in clinical situations

requiring protection of the stomach lining during the period of treatment with NSAIDs, such as medical history positive for gastritis, peptic ulcer or related conditions predisposing the patient for developing gastric upset and/or gastric irritation and/or gastric ulcers. However, he concluded that the naproxen/esomeprazole dispensed to the Assignor herein was not medically necessary for the following reason:

"In this particular case, however, there was no mentioning of any relevant past medical history that would justify the use of PPI agent, such as Esomeprazole. Therefore, there was no need for combination formulary, such as Vimovo (Naproxen combined with Esomeprazole). In this clinical situation, Naproxen/Esomeprazole was not medically necessary. However, I find Cyclobenzaprine medically necessary as this medication is a muscle relaxer and is appropriate treatment for these types of injuries."

Inasmuch as the peer reviewer "demonstrated a factual basis and medical rationale for his determination that there was no medical necessity for the {naproxen/esomeprazole} at issue here," "the burden shifted to the (the provider) to present (its) own evidence of medical necessity." See Cappelllo v. Global Liberty Insurance Company, 57 Misc.3d 143(A), 2017 N.Y. Slip Op. 51415(U) (App. Term 1st Dept. 2017).

In order for an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. See High Quality Medical, P.C. v. Mercury, Ins. Co. 26 Misc.3d 145(A) (App. Term 2nd, 11th and 13th Jud. Dists. 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A) (App. Term 2d, 11th and 13th Jud.Dists. 2009).

To refute the peer review, the Applicant relies upon NP Bikel's examination of the Assignor on November 8, 2023 which documented the Assignor's complaints of pain in her neck, back, right shoulder and right knee as well as restrictions in motion in her lumbar spine, cervical spine and right shoulder.

The conflicting medical expert opinions adduced by the parties sufficed to raise an issue as to the medical necessity of the treatment underlying the provider's first-party no-fault claim. See Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013).

After careful consideration of the evidence, I find the Respondent has submitted sufficient evidence to satisfy its burden of proof that the naproxen/esomeprazole dispensed to the Assignor herein was not medically necessary. I am persuaded by Dr. Dumesh's assertion that the latter medication was not medically necessary given that the Assignor did not have any past medical history, such as gastritis and peptic ulcer, which would justify the use of a PPI agent, such as Esomeprazole. Accordingly, the Applicant

is denied reimbursement for the naproxen/esomeprazole. However, the Applicant is awarded the sum of \$155.66 for the cyclobenzaprine, which is the proper fee schedule rate according to the Red Book.

Based upon the foregoing, I find in favor of the Applicant in the sum of \$155.66.

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
	United Pharmacy NYC Inc.	11/10/23 - 11/10/23	\$2,869.10	Awarded: \$155.66
Total			\$2,869.10	Awarded: \$155.66

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/11/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall pay interest from July 11, 2024, the date that arbitration was requested, to the date of payment.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of \$1,360.00. See 11 NYCRR 65-4.6(d). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(b).

- 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 Nassau

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

04/30/2025
(Dated)

Mitchell Lustig

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:
30738dd061cabd84853933012609f449

Electronically Signed

Your name: Mitchell Lustig
Signed on: 04/30/2025