

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Chemists Pharmacy Inc
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1360-2982

Applicant's File No. 167038

Insurer's Claim File No. 0726161136

NAIC No. 19240

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 04/25/2025
Declared closed by the arbitrator on 04/25/2025

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC 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, **\$1,817.20**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,345.26 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 73 year old EIP reported involvement a motor vehicle accident on August 22, 2023; claimed related injury and received Lidocaine ointment, Cyclobenzaprine and Meloxicam prescription medication provided by the applicant on September 13, 2023.

The applicant submitted a claim for this topical and oral prescription medication, payment of which was denied by the respondent based upon a peer review by Jason Cohen, M.D. dated July 29, 2024.

The respondent also asserted a fee schedule defense.

The issue to be determined at the hearing is whether the respondent established that the prescription medication at issue was 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.)

Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

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 Diclofenac gel, Cyclobenzaprine and Meloxicam prescription medication provided by the applicant was not medically

necessary, respondent relies upon the report of the peer review by Dr. Cohen, who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to him. Dr. Cohen considered possible arguments and justification for the need for the topical and oral prescription medication at issue and determined that it was not warranted under the circumstances presented.

Dr. Cohen discussed in detail the general uses and benefits of each of the oral and topical medications at issue. He noted that there was evidence documented in the examination of the EIP by Yahya Shah, P.A of muscle spasm for which Cyclobenzaprine would be indicated.

Dr. Cohen determined that since there was no documentation or evidence based on the examination by Yahya Shah, P.A. of any failed first line agents prior to prescribing Meloxicam and that there was no evidence of any peripheral nerve pain or neuropathic pain. Therefore, the Meloxicam oral medication and the topical lidocaine ointment did not meet the standard of care and were not medically necessary for these prescription medications for this particular EIP at the time it was provided.

Dr. Cohen supported, with relevant medical literature, his opinion that Meloxicam and Lidocaine ointment at issue were not medically necessary.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the prescription medication at issue was not indicated for this particular EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, who bears the ultimate burden of persuasion to establish that the prescription medication at issue were medically necessary.

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including evaluations of the EIP by Yahya Shah, PA on May 7, 2024 and July 16, 2023 at which time the prescriptions for Lidocaine, Cyclobenzaprine, and Meloxicam were refilled and the report indicated the general uses and benefits of these medications for treatment for muscle spasm. The report of the August 29, 2023 evaluation documented prescriptions for Lidocaine, Cyclobenzaprine and Meloxicam without specific comment on the need for continued use of this prescription medication.

In this case, the submitted medical records do not meaningfully address the arguments that are raised in the peer review and do not establish that the topical and oral prescription medication at issue was medically necessary for this particular EIP at the time it was provided on September 13, 2023.

Furthermore, the applicant did not provide a rebuttal to the peer review and therefore it did not respond to the respondent's argument that the prescription medication provided to the EIP was a deviation from a reasonable medical standard of care. The medical records alone are not sufficient to rebut the conclusions of Dr. Cohen.

Based on the foregoing, I find that the respondent established that the prescription medication at issue was not medically necessary.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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.

05/16/2025
(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:
b1e18a8172ed4ab2ad7289cba089e8a9

Electronically Signed

Your name: Anne Malone
Signed on: 05/16/2025