

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lenox Hill Radiology & Medical Imaging
Associates PC
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No.	17-24-1377-9104
Applicant's File No.	CF13030988
Insurer's Claim File No.	0494299080001
NAIC No.	36447

ARBITRATION AWARD

I, Victor Moritz, 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: IP

1. Hearing(s) held on 05/15/2025
Declared closed by the arbitrator on 05/15/2025

Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated virtually for the Applicant

Meliane Diedro from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,866.16**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended their claim to \$3382.90 to comply with the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount at issue.

3. Summary of Issues in Dispute

The applicant seeks reimbursement for the cost of imaging studies provided to the IP (J.S. 36-year-old female) on August 8 and October 30, 2024, relative to a May 11, 2022 motor vehicle accident. The respondent denied this claim based on the defense of lack of medical necessity per the results of an Independent Medical Evaluation (IME) performed by Dr. Howie Kiernan on February 23, 2023. The applicant has amended their claim to comply with the fee schedule, and the parties have stipulated that the amount at issue is proper. This matter is determined after reviewing the submissions and presentations of both sides. I have reviewed the documents contained in the electronic case folder as of the closing of the file. The hearing was held on Zoom.

4. Findings, Conclusions, and Basis Therefor

I find for the respondent and deny this claim in its entirety.

IME

The claim was denied based on the results of the IME performed by Dr. Kiernan on February 23, 2023, which acknowledged the history of the IP's motor vehicle accident, noting the IP was rendered unconscious. However, she was uncertain for how long. Injuries were sustained to her head, neck, middle, and lower back, as well as her shoulders, elbows, wrists, knees, ankles, and feet. The IP informed Dr. Kiernan that she had sustained a left foot fracture. At this evaluation, she indicated she was undergoing chiropractic massage treatments at a rate of four times a week as well as physical therapy. There were some inconsistencies regarding additional diagnostic tests that had been undertaken. The IP stated on August 18, 2022, she underwent a right knee surgery and a second surgery took place in October 2022, however there was no evidence of a second procedure. The IP reported receiving injections to her lower back, right shoulder, left shoulder, and left knee. So indicated that she was planning to have middle back, bilateral shoulder, and left knee surgery. She also allegedly scheduled middle and lower back injections.

At the time of this evaluation, the IP was complaining of pain in her head, neck, middle and lower back, her shoulders, right wrist and hand, her knees, ankles, and feet. Various records were reviewed. It is noted that an August 10, 2022, EMG/NCV study revealed no evidence of lumbar and cervical radiculopathy. The cervical spine MRI from June 13, 2022, revealed a straightening of the lordosis and a normal cord signal. MRI of the right knee from June 20, 2022, revealed an edema of the prepatellar bursa with moderate joint effusion, lateral patella subluxation, and tendinopathy. IP did undertake an epidural injection in the cervical region on October 24, 2022, and the aforementioned August 18, 2022, right knee arthroscopy was reviewed.

The evaluation of the cervical spine revealed no tenderness or spasms with full range of motion. Various orthopedic test findings were negative, and the neurological evaluation of the upper extremity was intact. The evaluation of the thoracic spine revealed no complaints of tenderness with full range of motion. The evaluation of the lumbar spine revealed no spasms or complaints of tenderness with full range of motion. The straight

leg raise test was negative bilaterally, and additional orthopedic test findings were negative. The neurological evaluation of the lower extremity was intact. The evaluation of the shoulders, elbows, wrists, hands, hips, knees, ankles, and feet was normal in all areas. The impression was cervical, thoracic, and lumbar spine sprain/strains resolved; bilateral shoulder, elbow, wrist, hip, left knee, ankle, and feet sprain/strains resolved, with note that right knee status post-surgery was healed. The IP had no disability and required no further care.

Applicant's Submissions

The applicant acknowledged the report dated January 30, 2024, almost one year after this IME is the most contemporaneous to Dr. Kiernan's evaluation. The evaluation by Dr. David Capiola noted the patient complaining of bilateral shoulder pain with weakness and stiffness as well as bilateral knee pain with buckling and mechanical instability. Various medical findings in the shoulder region and knees revealed deficits. The right knee arthroscopy from August 18, 2022, was noted without any mention of any other surgical procedures. The additional assessment was left knee meniscal tears as well as potential bilateral shoulder rotator cuff tears. MRIs of the right knee and shoulder were requested.

A follow-up evaluation on July 25, 2024, revealed significant complaints in the left and right ankles. Various positive findings were noted, and the assessment included bilateral ankle joint diffusion with internal derangement as well as potential tears of various ligaments. MRI studies were ordered.

I note that the August 8, 2024, MRI of the left ankle revealed non-insertional Achilles tendinosis with mild retrocalcaneal bursitis, no evidence of significant peri-tendinitis or para-tendinitis, and no ligament deformity. There was a partial-thickness tear of the anterior talofibular and calcaneofibular ligaments with bone contusions.

The MRI of the right knee from August 8, 2024, revealed high-grade chondromalacia with moderate edema and deep infrapatellar bursitis.

The MRI of the right ankle from August 8, 2024, revealed findings consistent with a prior high-grade tear of the talofibular ligament and a thickening of the calcaneofibular ligament with scarring from a partial tear, as well as tendinosis/tenosynovitis, as well as non-insertional Achilles tendinosis and mild retrocalcaneal bursitis.

An August 15, 2024, evaluation revealed continued right ankle and left ankle pain with continued positive findings.

Finally, the MRI of the right shoulder from October 30, 2024 revealed supraspinatus tendinosis and subacromial subdeltoid bursitis.

Legal Standards for Determining Medical Necessity

It is well settled that an applicant established its prima facie entitlement to payment by proving it submitted a claim set forth the facts and the amount of the loss sustained and

that payment of no-fault benefits were overdue (see Insurance Law § 5106[a]; Viviane Etienne Med. Care v Country-Wide Ins. Co., 25 NY3d 498, 501 (2015); Countrywide Ins. Co. v. 563 Grand Medical PC 50 A.D. 3d. 313 (1st Dept., 2008); Sunshine Imaging Assoc./WNY MRI v. Geico. Ins. Co., 66 A.D. 3d. 1419 (4th Dept., 2009). A facially valid claim is presented when it sets forth the name of the patient; date of accident; date of the services; description of services rendered and the charges for those services. See Vinings Spinal Diagnostic PC v. Liberty Mutual Insurance Company, 186 Misc. 2d 287 (1st Dist. Ct. Nass. Co.1996). The applicant has met this burden.

When evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment Kingsborough Jewish Med. Ctr. v. Allstate Ins. Co. 61 A.D. 3d. 13 (2d. Dept., 2009), See also Channel Chiropractic PC v. Country Wide Ins. Co. 38 AD 3d. 294 (1st Dept., 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co. 21 Misc. 3d. (142A) (App. Term 2d. Dept., 2008). In evaluating the medical necessity of services with proof of each party, particularly the conclusion is contradictory; consideration must be given to the evidentiary burdens. Respondent must prove first that the services were not medically necessary.

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity for future health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), (App. Term 2d & 11th Dists. Sept. 3, 2008); Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), (Dist. Ct., Nassau Co., Andrew M. Engle, J., May 29, 2008). Where an IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002), as the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994); Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 4(App. Term 2d & 11th Dists. Sept. 29, 2006). The case law is clear that a provider must rebut the conclusions and determinations of the IME doctor with his own facts. Moreover, the Appellate Term, 2d, 11th & 13th Dists., recently stated: "Assuming the insurer is successful in satisfying its burden, it is ultimately plaintiff who must prove, by a preponderance of the evidence, that the services or supplies were medically necessary." Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 (App. Term 2d, 11th & 13th Dists. 2012).

Application of Legal Standards

I note the validity of denials based upon negative IME findings have been recognized by several Courts. See, e.g., Innovative Chiropractics P.C. v. Mercury Ins. Co., 25 Misc3d 137 (App. Term 2d & 11th Dists. 2009); B.Y. M.D., P.C. v. Progressive Casualty Ins. Co., 26 Misc3d 125 (App. Term 9th & 10th Dists. 2010). An IME report can be the basis of a termination of benefits if ultimately found to be persuasive. Whether an IME report is persuasive, and meets the carrier's burden is a factual decision, which must be rendered on a case-by-case basis.

Therefore, when as here an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for the claim's rejection, the presumption of medical necessity and causality attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute the IME findings and prove the necessity of the disputed services and the causal relationship between the injuries and the accident. See, CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 87 (App. Term 1st Dept.); Eden Med., P.C. v. Progressive Cas. Ins. Co., 19 Misc.3d 143(A) (App Term 2d & 11th Jud.Dists., 2008). Be Well Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 18 Misc. 3d. 139 (A) (App. Term 2d Dept., Feb. 21, 2008); A.Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc. 3d. 131 (A) (App Term 2d Dept.); West Tremont Med. Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d. 131 (A) (App Term 2d Dept., 2006).

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In the instant matter, I find for the respondent and deny the claim in its entirety.

Dr. Kiernan provided a comprehensive evaluation of the IP's condition as of February 2023, acknowledging prior injuries; however, as of the IME date, the IP's condition had resolved, and no positive orthopedic or neurological findings were noted, notwithstanding subjective complaints of pain. Further, Dr. Kiernan noted some inconsistencies in terms of the treatment the IP had received. The medical submissions from the applicant concern evaluations almost one year and eighteen months after the IME, with positive findings noted for the ankles, knees, and shoulder. I find the applicant's submission is insufficient to create a nexus between the underlying accident from 2022 and the medical services of 2024, given the intervening IME in 2023, which established the IP's condition had resolved.

Therefore, the claim is denied in its entirety.

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 Westchester

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

06/08/2025
(Dated)

Victor Moritz

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:

f8dabcc3cfee2b1c770dbbd82d392fa9

Electronically Signed

Your name: Victor Moritz
Signed on: 06/08/2025