

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Conrad F Cean MD, PLLC  
(Applicant)

- and -

Enterprise Rent A Car  
(Respondent)

AAA Case No. 17-24-1348-1176

Applicant's File No.

Insurer's Claim File No. 20407180

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Eileen Hennessy, 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-D.P.

1. Hearing(s) held on 05/21/2025  
Declared closed by the arbitrator on 05/21/2025

Marc Schwartz from Cean Owens Law Group PLLC participated virtually for the  
**Applicant**

Ayesha Syed from McCormack, Mattei & Holler participated virtually for the  
**Respondent**

2. The amount claimed in the Arbitration Request, **\$2,621.13**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated and agreed that (i) Applicant has met its prima facie burden by submitting evidence that payment of no-fault benefits is overdue, and proof of its claim was mailed to and received by Respondent and (ii) Respondent's denial of the subject claim was timely issued.

3. Summary of Issues in Dispute

The record reveals that the Assignor-D.P., a 39-year-old female, claimed injuries as a passenger of a motor vehicle involved in an accident that occurred on 11/22/2023. Applicant billed for bilateralthoracic facet injections, bilateral sacroiliac joint injections, trigger point injections, and ultrasonic guidance conducted on 2/7/2024. Respondent

denied the claim based on a lack of medical necessity as determined by the peer review report of Matthew Spiegel, M.D., dated 3/19/2024. The issues to be determined are whether the services are medically necessary and 2) whether Applicant billed in accordance with the applicable fee schedule?

#### 4. Findings, Conclusions, and Basis Therefor

Applicant is seeking reimbursement for bilateral thoracic facet injections, bilateral sacroiliac joint injections, trigger point injections, and ultrasonic guidance. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

An arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary in accordance with 11 NYCRR 65-4.5(o) (1). Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

#### **Legal Standards for Determining Medical Necessity**

To support a lack of medical necessity defense, Respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." *See Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2nd, 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 generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006). The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, *Kingsbrook Jewish Medical Center v. Allstate Ins. Co.*, 61 A.D.3d 13, 871 N.Y.S.2d 680 (2d Dept. 2009), such as by a qualified expert performing an independent medical examination or conducting a peer review of the injured person's treatment. *See Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp.*, 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003). The appellate courts have not clearly defined what satisfies the insurer's evidentiary standard except to the extent that "bald assertions" are insufficient. *Amherst Medical Supply, LLC v. A Central Ins. Co.*, 41 Misc.3d 133(A), 981 N.Y.S.2d 633 (Table), 2013 NY Slip Op 51800(U), 2013 WL 5861523 (App. Term 1st Dept. Oct. 30, 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity. The trial courts have held that a peer review 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 medical practice as a medical

rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. *See generally Nir v. Allstate Ins. Co.*, 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); *See also, All Boro Psychological Servs. P.C. v. GEICO*, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

Where a Respondent meets its burden, it becomes incumbent on the claimant to rebut the peer review. *Be Well Medical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 18 Misc.3d 139(A), 2008 WL 506180 (App. Term 2d & 11 Dists. Feb. 21, 2008); *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 2007 WL 1989432 (App. Term 2d & 11 Dists July 3, 2007. "[T]he insured/provider bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb.'" *Bedford Park Medical Practice, P.C. v. American Transit Ins. Co.*, 8 Misc.3d 1025(A), 2005 WL 1936346 at 3 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). "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 (*see* Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11 ed])." *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131(A), 2006 N.Y. Slip. Op. 5187(U) at 2, 2006 WL 2829826 (App. Term 2d & 11 Dists. Sept. 29, 2006).

#### Application of Legal Standards

Applicant billed for bilateral thoracic facet injections, bilateral sacroiliac joint injections, trigger point injections, and ultrasonic guidance conducted on 2/7/2024. In support of its contention that the services were not medically necessary, Respondent relies upon the peer review report of Matthew Spiegel, M.D., dated 3/19/2024. A formal written rebuttal was not submitted by Applicant. Applicant relies on the sworn testimony of treating doctor Conrad F. Cean, M.D.

Respondent has met its evidentiary burden. The peer review authored by Matthew Spiegel, M.D., dated 3/19/2024, adequately set forth the factual basis and medical rationale to support the conclusion that the services in dispute were not medically necessary. That being so, the burden shifts to the Applicant to counter Respondent's showing.

In order to rebut the defense of lack of medical necessity Applicant needs to rebut the conclusions set forth in the peer review. *See Yklik, Inc. v. GEICO Ins. Co.*, 2010 NY Slip Op 51336(U) [28 Misc 3d 133(A)]. Where there is no such showing or the claimant fails to respond the Respondent is entitled to prevail. (*A. Khodadadi Radiology v. NY Central Mutual Ins.*, 16 Misc 3d 131(A) (Appellate Term, 2nd Dept.).

Having carefully reviewed the evidence, including the sworn testimony by Dr. Cean, the examination reports, dated 12/5/2023 and 1/30/2024, the operative notes, dated 2/7/2024, conservative treatment records, and all the medical records incorporated into the electronic file, I find, as a matter of fact, that the services in dispute were not

medically necessary. While Applicant argues that the peer doctor did not review the 1/30/2024 examination report, I find the peer sufficient to establish lack of medical necessity as the report described in detail the standard of care for the procedures billed and how the standard of care was not met in this case. Specifically, Dr. Spiegel notes in pertinent part, supported by medical literature, "The standard of care for the sprain/strain injuries indicated and reportedly sustained on 11/22/2023 typically involves an exercise based course of therapy combined with oral analgesics including NSAIDs and Tylenol which is generally provided for at least a period of 6 to 12 weeks with the majority of sprain/strain injuries resolving within that time. Furthermore, the claimant was still engaged in the subacute phase of treatment and given the lack of benefit indicated from the chiropractic treatment provided, a course of exercise based physical therapy would have been appropriate at that point in time rather than injections that are typically indicated for chronic pain", "Moreover, the efficacy of facet injections with regard to pain management has not been established in the medical literature. In fact, while facet/medial branch block injections are commonly used, there is insufficient high-quality evidence to support their usage over placebo/sham control procedures or conservative therapy for lower back pain. Further investigations are required to prove their efficacy in targeting lower back pain, which is attributed to facet joints and this must be balanced against any potential adverse events as a result of the injections", and "With regard to the SI joint injections, it is unclear as why these injections would be performed prior to exhausting conservative treatment including a course of exercise based therapy, in addition to the chiropractic care and acupuncture in which the claimant was still actively engaged (Citation omitted). Finally, with regard to the accompanying trigger point injections, I also find these to be medically unnecessary as these injections do not require an ambulatory setting as well as the fact that the claimant was still engaged in conservative therapy addressing reported myofascial pain with myofascial release incorporated into the chiropractic care provided to the claimant and for which the claimant was still engaged in the subacute phase of treatment. There is also no clear-cut evidence that these types of injections are effective in pain relief compared to placebo".

Dr. Cean testified regarding why the services were medically necessary based on the clinical findings and his experience. However, he did not cite to any medical literature in support of his position, which would rebut the findings of Dr. Spiegel. Furthermore, while the 12/5/2023 examination references sacroiliac joint tenderness there is no reference to SI joint complaints, examination findings, or diagnosis. The chief complaints in the 1/30/2024 examination report are, "LEFT KNEE PAIN , BILATERAL SHOULDER PAIN , THORACIC PAIN , LUMBAR PAIN , RIGHT ELBOW PAIN, NECK" and the diagnoses in the 1/30/2024 report include, "LUMBAGO - FACET PAIN, CERVICALGIA - FACET PAIN, THORACIC FACET PAIN, LEFT SHOULDER SPRAIN, RIGHT SHOULDER SPRAIN, LEFT KNEE SPRAIN M54.5 - LOW BACK PAIN M54.2 - CERVICALGIA M25.511 - PAIN IN RIGHT SHOULDER M25.512 - PAIN IN LEFT SHOULDER M25.562 - PAIN IN LEFT KNEE M54.6 - PAIN IN THORACIC SPINE". The report states the interventional treatment is "INTRAMUSCULAR INJECTION OF THE LUMBAR PARASPINAL-ULTRASOUND GUIDED" and "SCHED CERVICAL FACET BLOCK-- PT'S PAIN REMAINS S/P SEVERAL WEEKS OF CONSERVATIVE THERAPY SCHED IM INJECTION- CERVICAL". There is no documented ranges of motion of the thoracic spine or lumbar spine. There are no positive orthopedic test results regarding the areas

treated and no reference to the interventional treatment conducted in the report apart from the trigger points. The report does not indicate what part of the body the trigger point injections were performed on. While Dr. Cean testified that the claimant was undergoing conservative treatment he indicated his notes did not indicate for how long the treatment had continued.

I find that the more credible evidence resides with the Respondent. I am more persuaded by the peer review and find that Applicant failed to rebut the peer doctor's opinion. Dr. Cean's testimony did not rebut the peer doctor's findings. Applicant's claim is denied.

### **CONCLUSION**

Accordingly, Applicant's claim is denied. 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 NY

SS :

County of Nassau

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

06/20/2025  
(Dated)

Eileen Hennessy

### **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:**  
eb5c48d856222d9ce15b2e626c864e84

### Electronically Signed

Your name: Eileen Hennessy  
Signed on: 06/20/2025