

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No. 17-24-1374-9959

Applicant's File No. AR24-26110

Insurer's Claim File No. 218691242

NAIC No. 24260

**ARBITRATION AWARD**

I, Brian Rudolph, 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: OAMC

1. Hearing(s) held on 05/29/2025  
Declared closed by the arbitrator on 05/29/2025

Alek Beynenson, ESQ. from The Beynenson Law Firm PC (Nassau) participated virtually for the Applicant

Christian Guayasamin from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,589.47**, was AMENDED and permitted by the arbitrator at the oral hearing.

As per counsel, the Applicant amends the amount at issue to \$1,473.17 to comply with the proper fee schedule.

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

3. Summary of Issues in Dispute

The Applicant seeks reimbursement of charges for Follow-Up Visits & Physical Therapy performed on the claimant (OAMC 43-year-old male passenger) between

1/2/24 and 9/23/24, following a 5/26/21 motor vehicle accident. The Respondent timely denied the claim based upon an Independent Medical Examination (IME) conducted by its consultant, Ernesto Seldman, M.D., dated 7/12/23.

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

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

In order to support a lack of medical necessity defense, the 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 2<sup>nd</sup>, 11<sup>th</sup>, and 13<sup>th</sup> Jud. Dists. 20140). The Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to the Applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. Slip Op 52116 (App. Term 1 Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1<sup>st</sup> Dept. 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 civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet the 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, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012). "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." Nir supra.

In support of its contention that the medication at issue was not medically necessary, the Respondent relies upon the examination report of Ernesto Seldman, M.D., dated 7/12/23. A review of the examination report reveals all tests were objectively negative and unremarkable. The results of the examination presented a cogent medical rationale as to why further benefits, including medication, were terminated. Based upon the foregoing, the Respondent has set forth a cogent medical rationale in support of its defense.

In opposition to the examination report, the Applicant has failed to present factually sufficient rebuttal evidence demonstrating further treatment/medication was medically necessary. The medical reports submitted by the Applicant fail to contradict the negative findings. In the absence of contrary contemporaneous positive objective findings through provocative testing the Applicant has failed to meet the burden of persuasion in rebuttal.

Based on the foregoing, the claim is denied in its entirety.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 Queens

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

06/28/2025  
(Dated)

Brian Rudolph

## **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:**  
550c17e5c4e6b1b76be7316abbe877b8

### Electronically Signed

Your name: Brian Rudolph  
Signed on: 06/28/2025