

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.             | 17-24-1378-4286 |
| Applicant's File No.     | CF13031104      |
| Insurer's Claim File No. | 0579677640001   |
| NAIC No.                 | 36447           |

**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 06/02/2025  
Declared closed by the arbitrator on 06/02/2025

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

Colleen Foster from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,934.24**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$1,450.97 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 48 year old EIP reported involvement in a motor vehicle accident on October 1, 2024; claimed related injury and underwent MRIs of the cervical spine and left shoulder provided by the applicant on October 17, 2024.

The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based upon a peer review by Howard Levy, M.D. dated November 20, 2024.

**The issue to be determined at the hearing is whether the respondent established that the medical services at issue were 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, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists. 2014.)

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 medical services provided by the applicant were not medically necessary, respondent relies upon the peer review by Dr. Levy, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him. Dr. Levy considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

Dr. Levy submitted a report in which he discussed the standard of care for MRI studies provided to the EIP and determined that they did not meet these criteria, which included a reasonable trial of conservative treatment after which, if there was no significant improvement over 6 to 8 weeks, may have been appropriate.

According to the submissions the EIP did not receive any conservative care prior to referral for the MRI studies of the cervical spine and left shoulder. The report by Dr. Wert dated October 8, 2024 documented some positive testing, which Dr. Levy determined could have been treated with adequate conservative treatment.

He discussed each of the MRI studies and provided his opinion, supported with relevant medical literature, to conclude that neither was necessary for this particular EIP at the time they were provided.

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

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submission of the October 8, 2024 report by Dr. Wert.

Since the applicant did not provide a rebuttal to the peer review, it did not respond to the respondent's argument that the medical services provided to the EIP were a deviation from a reasonable medical standard of care. The medical records alone are not sufficient to rebut the conclusions of Dr. Levy.

A review of the applicant's submissions reveals that it has met the burden of persuasion in rebuttal and the medical records submitted are insufficient to overcome the burden of production established by the respondent.

Based on the foregoing, I find that the respondent has established that the services at issue were 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.

06/30/2025  
(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:**  
c7238c65e20b10a449743b146be5aaac

### **Electronically Signed**

Your name: Anne Malone  
Signed on: 06/30/2025