

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

5th Avenue Wellness Medicine PC
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-25-1382-3199

Applicant's File No. 178631

Insurer's Claim File No. 0759564825

NAIC No. 29688

ARBITRATION AWARD

I, Stacey Erdheim, 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: Claimant

1. Hearing(s) held on 07/02/2025
Declared closed by the arbitrator on 07/02/2025

John Faris from Law Offices of Eitan Dagan participated virtually for the Applicant

Billsy Reyes- Bakky from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$8,525.32**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant seeks reimbursement for services rendered 11/7/24 in the amended amount of \$4955.66. Both sides agree that this is the proper fee schedule.

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

3. Summary of Issues in Dispute

This arbitration arises out of treatment of a 26 year old male Claimant (EMG) for injuries sustained in a motor vehicle accident occurring on 6/20/24. Applicant seeks reimbursement for services rendered 11/7/24 in the amended amount of \$4955.66. Both sides agree that this is the proper fee schedule. Respondent timely denied the bill based upon a Peer Review by Jason Cohen MD dated 12/12/24.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center file as of the date of the Hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of a 26 year old male Claimant (EMG) for injuries sustained in a motor vehicle accident occurring on 6/20/24. Applicant seeks reimbursement for services rendered 11/7/24 in the amended amount of \$4955.66. Both sides agree that this is the proper fee schedule. Respondent timely denied the bill based upon a Peer Review by Jason Cohen MD dated 12/12/24.

It is Applicant's prima facie obligation to establish entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its prima facie entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud

The record reveals that Claimant was involved in a motor vehicle accident on 6/20/24. MRI testing of the lumbar spine performed on July 26, 2024 revealed normal alignment of lumbar spine. At L4-5, broad based left paracentral disc herniation is present, resulting in compression and impingement upon the ventral thecal sac, AP diameter of disc protrusion measures 2.8 mm. AP diameter of dural sac measures 12 mm. At L5-S1, broad based left paracentral disc herniation is present, resulting in compression and impingement upon the ventral thecal sac, AP diameter of disc protrusion measures 4.8 mm. AP diameter of dural sac measures 9.5 mm. Report of examination by Faisal Masood, DC, on August 13, 2024, reported subjective complaints of pain in neck and lower back. Neck pain radiated into bilateral shoulder, arm, fore arm and hand, lower back pain radiated into bilateral shoulder, wrists, fingers, feet, leg and toes. Pain scale was 8/10 for neck. Medication use was not documented. The musculoskeletal examination of cervical spine revealed moderate muscle spasm, tenderness C1-C7 level, decreased range of motion. Spurling's test was positive bilaterally. Positive Jackson's test was positive bilaterally. Thoracic spine examination revealed moderate tenderness, muscle spasm and restricted range of motion with pain. Lumbar spine examination revealed moderate muscle spasm bilaterally, moderate tenderness at L1-L5-S1 level,

decreased range of motion. Straight leg raise test was positive at 30 degree on right and 60 degree on left. Neurological examination revealed no muscle atrophy noted, muscle strength 4/5. DTRs were 2+. Sensation was decreased to light touch and pin prick. Clinical impression was cervical post traumatic sprain and strain syndrome; lumbar post traumatic sprain and strain syndrome; thoracic traumatic sprain and strain syndrome; rule out post traumatic lumbar radiculopathy; rule out cervical disc herniation; rule out lumbar disc herniation; myofascial pain syndrome; spasm of muscle; cervicalgia; sciatica; lower back pain (lumbalgia). The claimant was recommended EMG/NCV of the lower extremities. Report of examination by Metul Shah, MD., on September 27, 2024, reported subjective complaints of pain in neck, mid back and lower back. Neck pain radiated into bilateral shoulders, lower back pain radiated into bilateral lower extremities. Pain scale was 6/10 for neck and lower back, 7/10 for mid back. Medication use was not documented. The musculoskeletal examination of cervical spine revealed moderate tenderness, decreased range of motion. Positive foraminal compression test. Thoracic spine examination revealed tenderness, multiple trigger points. Lumbar spine examination revealed moderate tenderness, multiple trigger points, decreased range of motion. Positive straight leg raise test bilaterally and Kemp's test bilaterally. Neurological examination revealed muscle strength 5/5. DTRs were 2+.. Clinical impression was cervical radiculopathy; cervical disc displacement; cervical disc herniation at C3-4, C4-5, C5-6; dorsalgia; thoracic disc displacement; thoracic disc herniation at T3-4; lumbar radiculopathy; lumbar disc displacement; and lumbar disc herniation at L4-5, L5-6. The claimant was recommended to continue physical therapy, trigger point injection; cervical and lumbar epidural steroid injections and cervical and lumbar discectomy. Claimant was seen by Metul Shah, MD., on November 7, 2024, reported subjective complaints of lower back pain. Pain scale was 7/10. Medication use was not documented. Clinical impression was lumbar radiculopathy; lumbar disc displacement and lumbar disc herniation. The claimant was recommended lumbar discectomy. On November 7, 2024, the claimant underwent lumbar percutaneous discectomy at L4-5 and L5-S1 levels, annuloplasty, disc injection and radiographic interpretation performed by Metul Shah, MD.

In the event an insurer relies on a peer review report to demonstrate that a particular service was medically unnecessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory and should be supported by evidence of generally accepted medical/professional practice or standards. *James M. Ligouri Physician, PC v. State Farm Mut. Auto Ins. Co.*, 2007 N.Y. Slip Op 50465 (U) (N.Y. Dist. Ct. 2007); *Jacob Nir v. Allstate Insurance Company*, 2005 NY Slip Op 25090; 7 Misc.3d 544; 796 N.Y.S.2d 857; 2005 N.Y. Misc. LEXIS 419 and *Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc. 3d 608; 777 N.Y.S.2d 241; 2004 NY Slip Op 24034.

In the event that an insurer's evidence rebuts the inference of medical necessity, by proof in admissible form, establishing that the services are not medically necessary and if such proof is not refuted by applicant such proof may entitle the insurer to a judgment in its favor. *Alfa Medical Supplies v. Geico General Ins. Co.*, 36 Misc.3d 156(A), 2012 N.Y. Slip Op. 51765(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2012); *Delta Diagnostic Radiology, PC v. American Transit Insurance Co.*, 18 Misc.3d 128(A), 2007 N.Y. Slip

Op. 52455(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007); A. Khodadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131(A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007).

Respondent timely denied the bill in dispute based upon a peer review by Jason Cohen MD dated 12/12/24. Dr. Cohen concluded that

Based on the medical records presented for review, including the evaluation by Metul Shah, MD, there is no indication for lumbar percutaneous discectomy, annuloplasty and all associated services performed on November 7, 2024,. The operative report by Metul Shah, M.D., documents placement of herniatome discectomy device through the cannula into the L4-L5 and L5-S1 nucleus for extraction. It does not specify an exact placement of decompression at that level. Such inexact and generalized decompression cannot reasonably be expected to satisfactorily address the multilevel broad based left paracentral disc herniation is present, resulting in compression and impingement upon the ventral thecal sac, identified on MRI. Finally, the complicated pathology identified on MRI is best managed by a skilled spine surgeon... Examination performed by Metul Shah, MD does not indicate any decreased deep tendon reflexes or neurological findings consistent with lumbar radiculopathy... There is non-convincing and limited evidence as to the efficacy of alternative nuclear decompression techniques and/or automated percutaneous lumbar discectomy. In the clinical scenario of radiculopathy, the standard of care involves a structured approach to treatment, including initial treatment options such as Physical therapy sessions scheduled two to three times per week for a duration of six weeks and pharmacotherapy including anti-inflammatories and gabapentinoids where appropriate. Assessment of treatment response after completion of physical therapy and pharmacotherapy should be documented. If initial treatment fails, the next step would involve a trial of epidural steroid injections, typically administered in a series of three injections and documented evaluation of outcomes after each injection during follow-up office visits. If conservative measures (physical therapy, pharmacotherapy, and epidural steroid injections) do not alleviate symptoms satisfactorily, the next step is referral to a surgical consultant and/or neurological consultant to explore the potential necessity and appropriateness of lumbar discectomy or other surgical interventions. One should also ensure ruling out of other potential pain mechanisms such as muscle spasm through a thorough evaluation. Adherence to these sequential steps ensures that treatment decisions are guided by the established standard of care, optimizing patient outcomes while appropriately considering surgical options only when conservative measures have been exhausted or deemed insufficient.

Once the peer review sets forth a reasonable factual basis and medical rationale for the opinion regarding the medical necessity for the treatment in dispute, the trier-of-fact will look to the Applicant to rebut the evidence and conclusion reached by the peer reviewer. In the absence of such a rebuttal, the denial of the claim can be sustained. A. Khodadadi Radiology, P.C. v. N.Y. Centr. Mut. Fire Ins. Co., 16 Misc.3d 131[A], 2007 NYS Slip Op 51342[U] [App. Term 2d & 11th Jud Dsts 2007]

I find that the Peer Reviewer has met the burden and will look to Applicant to refute the contentions made by the Peer Reviewer. Applicant has submitted medical records and a Peer Review Rebuttal by Metul Shah, M.D. Dr Shah reiterates the findings of the examinations and testing and argues that

Dr. Jason Cohen denied the medical necessity of the services provided on 11/7/2024 based on the conclusion in the peer review, dated 12/12/2024. Dr. Cohen stated, "The operative report by Metul Shah, M.D., documented placement of herniatome discectomy device through the cannula into the L4-L5 and L5-S1 nucleus for extraction. It does not specify an exact placement of decompression at that level. Such inexact and generalized decompression cannot reasonably be expected to satisfactorily address the multilevel broad-based left paracentral disc herniation is present, resulting in compression and impingement upon the ventral thecal sac, identified on MRI." In this case, there was disc herniation at the L4-L5 and L5-S1 levels. Therefore, it is very clear from the operative report that the decompression was indeed performed at the L4-L5 and L5-S1 levels. Dr. Cohen stated, "Examination performed by Metul Shah, M.D., does not indicate any decreased deep tendon reflexes or neurological findings consistent with lumbar radiculopathy." However, I would note that there was clear evidence of lumbar radiculopathy. The patient had 6/10 sharp, aching, and shooting pain in the lower back radiating into the bilateral lower extremities, hip, and buttock. The patient's pain was aggravated by turning, twisting, bending, walking, and standing. The positive clinical findings included moderate tenderness, multiple trigger points at deep palpation in the lower paraspinal musculature, decreased range of motion, and a positive Straight Leg Raise test. Also, the MRI revealed disc herniation and an EMG/NCV study of the lower extremities revealed right L5-S1 radiculopathy. Please note the patient's MRI findings of disc herniation and/or disc bulges are clear indications of radiculopathy. "By definition, radiculopathy describes pain that radiates down the legs and is often described by patients as electric, burning, or sharp. The most common underlying cause of radiculopathy is irritation of a particular nerve, which can occur at any point along the nerve itself and is most often a result of a compressive force. In the case of lumbar radiculopathy, this compressive force may occur within the thecal sac, as the nerve root exits the thecal sac within the lateral recess, as the nerve root traverses the neural foramina or even after the nerve root as exited the foramina. It may be related to disc bulging or herniation, facet or ligamentous hypertrophy, spondylolisthesis, or even neoplastic and infectious processes." A Review of Lumbar Radiculopathy, Diagnosis, and Treatment; Cureus. 2019 Oct; 11(10): e5934. Radiculopathy is a disease involving a spinal nerve root that may result from compression related to intervertebral disc displacement; spinal cord injuries; spinal diseases; and other conditions. Please also refer to: Lumbosacral Radiculopathy; Christopher E. Alexander, Matthew Varacallo, Last Update: March 23, 2019. "Lumbosacral radiculopathy is a term used to describe a pain syndrome caused by compression or irritation of nerve roots in the lower back. It can be caused by lumbar disc herniation, degeneration of the spinal vertebra, and narrowing of the foramen from which the nerves exit the spinal canal." Typical symptoms include radiating lower back pain, which radiates to one or both legs. Other common symptoms of radiculopathy can be numbness, tingling, reflex abnormalities, and/or weakness. Radiculopathy can be present, however, even without some of these symptoms. A positive straight leg raise test or as also known as (Lasegue sign) results from gluteal or leg pain by passive straight leg flexion with the knee in extension, and it may correlate with nerve root irritation and possible entrapment with decreased nerve excursion. This clinical neurological test has high sensitivity and low specificity, being an important diagnostic workup in patients with lower back pain and suspected

radiculopathy. (Straight Leg Raise Test, Gaston O. Camino Willhuber; Nicolas S. Piuze, Last Update: November 15, 2019.) This test has high sensitivity and been in common use for over a century to help diagnose lumbar disc displacement.

Comparing the relevant evidence presented by both parties against each other including the peer review, Applicant's rebuttal and the medical records, I am persuaded by Applicant's rebuttal and medical documentation.

Although the peer review states that the efficacy of the procedure at issue is not established in the medical literature, the rebuttal cites more recent medical authority to rebut this, which discusses good short and long term outcomes following percutaneous discectomy procedures. I find that the rebuttal sufficiently refutes the peer review and establishes the medical necessity of the services at issue.

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Applicant.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	5th Avenue Wellness Medicine PC	11/07/24 - 11/07/24	\$8,525.32	\$4,955.66	Awarded: \$4,955.66
Total			\$8,525.32		Awarded: \$4,955.66

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/16/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5, 2002, interest shall be paid, at the rate of 2% per month, simple, from the arbitration filing date and ending with the date of payment of the award

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

The insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Suffolk

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

07/07/2025
(Dated)

Stacey Erdheim

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:
27511f1e909e9fc69a6d0d225ba6a3af

Electronically Signed

Your name: Stacey Erdheim
Signed on: 07/07/2025