

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sunrise Med Plus LLC
(Applicant)

- and -

Travelers Personal Insurance Company
(Respondent)

AAA Case No. 17-24-1359-5128

Applicant's File No. TLD24-1078866

Insurer's Claim File No. 272 PP
IWN5034 002

NAIC No. 38130

ARBITRATION AWARD

I, Yael Aspir, 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 06/16/2025
Declared closed by the arbitrator on 06/16/2025

Kevin D'Arcy from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Samuel Lesman from Law Offices of Tina Newsome-Lee participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,132.30**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The EIP, JU, a 39 year old male driver, was injured by a motor vehicle involved in an accident on 10/06/23.

In dispute are the Applicant's claims for \$3,132.30 for treatment provided to the EIP on 02/08/24 through 05/30/24. Respondent timely denied the claim based on the 01/26/24 IME of Dr. Dorothy Scarpinato. No fee schedule issues were raised at the hearing.

Accordingly, the issue to be determined is the medical necessity of the services provided.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in Modria for both parties and make my decision in reliance thereon.

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 Dists]). As Applicant has established its prima facie case, the burden shifts to the insurer to prove that the services were not medically necessary.

Since Respondent's denial was timely, it was within its rights to assert lack of medical necessity as a defense. Liberty Queens Medical, P.C. v. Liberty Mutual Insurance Co., 2002 WL 31108069 (App. Term 2d & 11th Dists. June 27, 2002); cf. Country-Wide Insurance Co. v. Zablocki, 257 A.D.2d 506, 684 N.Y.S.2d 229 (1st Dept. 1999).

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008). If he does so, it becomes incumbent on the claimant to rebut the IME review, see AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 WL 323421 (App. Term 2d & 11th Dist. Feb. 9, 2002), because 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, 617 N.Y.S.2d 919 (3d Dept. 1994); Shtarkman v. Allstate Insurance Co., 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance company).

Respondent denied payment of services based on the 01/26/24 Orthopedic IME of Dr. Dorothy Scarpinato, effective 02/07/24. The EIP presented with complaints of pain to his neck, back, left arm, and left knee, reports receiving injections and use of Tylenol for pain relief, and is currently not working. The examination revealed complaints of tenderness, normal range of motion, no sensory or motor deficits, no spasm and no positive orthopedic testing. Dr. Scarpinato determined that the EIP's condition had resolved, and no further treatment was necessary.

In rebuttal, Applicant relies on the medical records in evidence. On 12/19/23, Dr. David Weissberg notes the EIP's continued complaints of left shoulder and left knee pain, despite conservative therapy and cortisone injections without relief. Left shoulder MRI

revealed a SLAP tear, and left knee MRI revealed tearing of the medial and lateral menisci. Left shoulder exam noted range of motion restrictions, tenderness, positive Apprehension Signs, O'Brien's Test, Impingement Sign and crepitus. Left knee exam noted range of motion restrictions, buckling/locking, swelling, tenderness, valgus instability, positive McMurray's test, crepitus and patella femoral grind. Left knee and left shoulder arthroscopy are recommended.

Upon careful review of the record, I find Applicant's medical records are sufficient to rebut the findings of the IME. Dr. Weissberg's examination of the EIP offers competent medical evidence, contemporaneous in time with the IME, demonstrating the existence of multiple positive objective findings to the left shoulder and left knee, and recommendations for surgical intervention.

Accordingly, Applicant's claim is awarded. I note this is in accord with my prior findings in AAA 17-24-1361-5452.

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	Status
	Sunrise Med Plus LLC	02/08/24 - 02/29/24	\$435.84	Awarded: \$435.84
	Sunrise Med Plus LLC	03/05/24 - 03/12/24	\$212.94	Awarded: \$212.94
	Sunrise Med Plus LLC	03/07/24 - 03/14/24	\$217.92	Awarded: \$217.92
	Sunrise Med Plus LLC	03/19/24 - 03/28/24	\$468.79	Awarded: \$468.79
	Sunrise Med Plus LLC	04/02/24 - 04/11/24	\$435.84	Awarded: \$435.84
	Sunrise Med Plus LLC	04/18/24 - 05/09/24	\$433.35	Awarded: \$433.35
	Sunrise Med Plus LLC	04/23/24 - 05/16/24	\$461.32	Awarded: \$461.32
	Sunrise Med Plus LLC	05/21/24 - 05/28/24	\$359.83	Awarded: \$359.83
	Sunrise Med Plus LLC	05/30/24 - 05/30/24	\$106.47	Awarded: \$106.47
Total			\$3,132.30	Awarded: \$3,132.30

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/05/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the

particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d) For claims that fall under the Sixth Amendment to the regulation, the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved dispute, subject to a maximum fee of \$1,360.

- 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 Nassau

I, Yael Aspir, 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)

Yael Aspir

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:
2ab05b85e5a280ed8e214c1cd790fe2a

Electronically Signed

Your name: Yael Aspir
Signed on: 07/07/2025