

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bay Ridge Orthopedic Assoc. PC
(Applicant)

- and -

Farmers Group Property and Casualty
Insurance Company F/K/A Metropolitan
Group Property and Casualty
(Respondent)

AAA Case No. 17-24-1378-6612
Applicant's File No. NA
Insurer's Claim File No. 7006984115-1-1
NAIC No. 34339

ARBITRATION AWARD

I, Paul Keenan, 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 SW

1. Hearing(s) held on 06/25/2025
Declared closed by the arbitrator on 06/25/2025

April Mittleman, Esq. from April Mittleman Esq. participated virtually for the Applicant

Brian M. Doyno, Esq. from Law Offices of Rothenberg & Romanek participated
virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,952.61**, was AMENDED and permitted by the arbitrator at the oral hearing.

Counsel for applicant amended the amount at issue to \$6938.82 by withdrawing the claim for office visit and to conform to fee schedule.

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

3. Summary of Issues in Dispute

ASSIGNOR, a 29- year-old female, was injured as a driver in a motor vehicle accident (MVA) December 30, 2023, injuring her neck, mid-back, left shoulder, lower back. Right hip and bilateral knees.

At issue herein is payment for leftRknee arthroscopy rendered April 12, 2024. Respondent denied payment based on the following:

Based on the findings of an independent medical peer review, the treatment is deemed not medically necessary. Peer report is available upon request.

4. Findings, Conclusions, and Basis Therefor

Submissions are available through ADR filings.

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Included in submissions is the peer review by Howard J. Levy, M.D. Records reviewed by Dr. Levy included billing, Operative Report by Howard I. Baum, M.D., MRIs, medication prescriptions, SSEP reports, and EMG/NCVs. Dr. Levy wrote, in pertinent part:

The claimant received physical therapy for the spine, left shoulder, and right hip on 1/22/2024 and 2/7/2024 in a total of 2 sessions. None of the sessions were received for the left knee. The reports were made available for my review.

The MRI report of the left knee dated 2/6/2024 revealed: High-grade tear and severe sprain of the proximal to mid-ACL. Subcortical cystic changes at the tibial insertion. Partial tear and sprain of the proximal to mid-MCL. Tear of the free edge of the body of the lateral meniscus which is blunted. The medial meniscus is intact. Moderate-sized joint effusion.

...

As per the article, July 21, Vol 55, Robert F LaPrade, MD; Knee arthroscopy: evidence for a targeted approach-Non-operative treatment first, page 1, 2020: Studies have established that a period of non-operative treatment is valid before undergoing surgery. Evidence for this is based on clinical trials where patients have nonspecific clinical and radiological findings. A trial of conservative treatment before arthroscopy was only mandatory. Where conservative treatment was undertaken before surgery but without adequate improvement, subsequent partial meniscectomy was effective.

In this case, the claimant was involved in the MVA on 12/30/2023 and sustained an injury to the left knee. On 4/12/2024, the claimant underwent left knee arthroscopy. As per the cited article, a trial of conservative treatment before arthroscopy was only mandatory. Where conservative treatment was undertaken before surgery but without adequate improvement, subsequent partial meniscectomy was effective. However, as per the available medical records, the claimant did not receive conservative treatment in any form to resolve the left knee complaints...

To establish entitlement to No-Fault benefits, applicant is required to submit proof that respondent timely received its properly completed claim forms and the claim was not paid. See *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D. 3d 742; 774 N.Y.S.2d 564; 2004 N.Y. App.Div. LEXIS 3597 (2nd Dept. 2004); *Amaze Medical Supply a/a/o Bermudez v. Eagle Insurance*, 2 Misc. 3d 128[A], 784 N.Y.S.2d 918 9(2003)). The burden then shifts to respondent to present admissible evidence demonstrating the existence of material issue(s) of fact in support of its basis for dement.

In the matter of *Jacob Nir, M.D. v. Allstate*, Civil Court of the State of New York, Kings County, 796 N.Y.S.2d 857, the Court held that a peer review based on a doctor citing only a review of medical provider's medical reports as the basis for his peer review report and not physically examining the patient before writing the peer review report or citing medical authority, standard or generally accepted medical practice as a rationale for his findings, is a conclusory peer review and insufficient to refute applicant's prima facie documentation.

Where respondent insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to provider to present its own evidence of medical necessity (See *Prince, Richardson on Evidence* §§ 3-104, 3-202 [Farrell 11 ed] th West *Tremont Medical Diagnostic P.C. v Geico Ins. Co.* 13Misc. 3d 131(A), 824 N.Y.S.2d 759 (Table), 2006 WL2829826 (App. Term 2d & 11 Dists. Sept 29, 2006).

Included in submissions is Letter of Medical Necessity/Rebuttal of Peer Review by Howard I. Baum, M.D. Dr. Baum wrote, in pertinent part:

Dr. Levy claims that the standard of care for the symptomatic knee begins with a course of conservative treatment. He further stated that conservative treatment for at least six weeks should be attempted prior to surgical intervention... It is well supported in the literature that surgery is the treatment of choice for traumatic meniscal and chondral injuries... In fact, ASSIGNOR received more than 4 months of physical therapy prior with no improvement. Dr. Levy contends that the conservative treatment received by ASSIGNOR was inadequate, but the patient did receive treatment for over three months, the standard recited by Dr. Levy...

Perusal of submitted documents, including the peer review by Dr. Levy, fails to support Dr. Baum's rebuttal. Dr. Levy did not specify six weeks as a minimum for conservative

treatment as stated in the rebuttal. The rebuttal also states that ASSIGNOR received four months (or three months) of conservative treatment prior to surgical intervention. This is not supported by submitted documentation.

The basis of the peer review is that ASSIGNOR did not receive adequate conservative treatment prior to surgical intervention.

Denial based on this peer review is sustained.

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

07/10/2025
(Dated)

Paul Keenan

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:
099ecf928d6c89cf6408c25c2745849c

Electronically Signed

Your name: Paul Keenan
Signed on: 07/10/2025