

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

RS Medical
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1370-2718

Applicant's File No. 24-61323

Insurer's Claim File No. 24-5389230

NAIC No. 11851

ARBITRATION AWARD

I, Greta Vilar, 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: Patient

1. Hearing(s) held on 03/18/2025, 06/17/2025
Declared closed by the arbitrator on 06/17/2025

Nicole Jones, Esq. from The Morris Law Firm, P.C. participated virtually for the Applicant

Grace Halligan from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,136.62**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended its amount in dispute to \$3111.63 withdrawing its claim for a shipping fee.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulate and agree that the only issue to be determined is whether the services at issue were medically necessary.

3. Summary of Issues in Dispute

The patient in this case is a 32-year-old male who was the driver of a motor vehicle involved in an accident on May 23, 2024. At issue is medical equipment provided to the patient on June 24, 2024. The respondent denied the applicant's claim based upon a July 22, 2024 peer review by Dr. Bogdan.

4. Findings, Conclusions, and Basis Therefor

The record in this case consisted of claimant's submission and respondent's submission, as well as documents not enumerated within this decision but which are contained in the electronic case file maintained by the American Arbitration Association.

11 NYCRR 65-4.5 (o) (1) (Regulation 68-D), reads as follows: 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.

Based on a review of the documentary evidence submitted to the ECF, this claim is decided as follows:

The respondent acknowledged receipt of the applicant's claim and issued a timely denial based upon lack of medical necessity. In support of its position the respondent has submitted a July 11, 2024 peer review by Dr. Bogdan. He reviewed the patient's medical records and concluded that the stimulator and related items provided to the patient were not medically necessary. He argues that the standard of care for the patient's injuries would be conservative treatment including chiropractic which was already underway. He states that this should have been attempted for at least six weeks prior to considering additional intervention. Instead, he points out that the device in this case was prescribed just two weeks after the patient's initial evaluation. He recommends against reimbursement.

"[T]he insured / provider bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb.'" *Bedford Park Medical Practice P.C. v. American Transit Ins. Co.*, 8 Misc.3d 1025(A), 806 N.Y.S.2d 443, 2005 N.Y. Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005).

I find that the peer review report of Dr. Bogdan is sufficient for the respondent to meet its burden of proof on the issue of medical necessity, shifting the burden to the applicant. In response, the applicant has not submitted a specific rebuttal. However, the applicant argues that there is sufficient evidence in the record to refute Dr. Bogdan's opinion. The applicant points out that when the patient was examined on June 19, 2024 he complained of pain in the head, neck and lower back. It was recommended that the patient begin conservative treatment including chiropractic manipulation for four weeks.

The device at issue was also prescribed that time. The examination states that it was being prescribed to address the patient's complaints of pain.

Having thoroughly reviewed the records before me I am persuaded by the respondent on the issue of medical necessity. I do not find that the medical records in this case are sufficient to refute Dr. Bogdan's opinion. Specifically, there is nothing to refute Dr. Bogdan's argument that inadequate conservative care had been rendered prior to the prescription of the device at issue. The applicant's claim is dismissed.

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 Suffolk

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

07/16/2025
(Dated)

Greta Vilar

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:
2249a6949b745ac7c6949b8dd0320d3b

Electronically Signed

Your name: Greta Vilar
Signed on: 07/16/2025