

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All Med Rx Inc d/b/a Lilly Rx
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-24-1378-5207

Applicant's File No. BT24-294338

Insurer's Claim File No. 32-59R2-68J

NAIC No. 25178

ARBITRATION AWARD

I, Robyn McAllister, 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

1. Hearing(s) held on 08/12/2025
Declared closed by the arbitrator on 08/12/2025

Heather Landeros, Esq. from The Tadchiv Law Firm, P.C. participated virtually for the Applicant

Mohammad Rubbani, Esq. from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,432.25**, 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

Whether Respondent properly denied Applicant's claim for providing prescription medications following the performance of left shoulder surgery for Assignor (EO/OE), a 32 year-old male passenger, in connection with treatment of injuries sustained in a motor vehicle accident on November 25, 2023, based on a peer review dated November 15, 2024 and an Independent Medical Examination on May 23, 2024 by Dr. Howard Kiernan.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1432.25 for providing Ibuprofen-Famotidine, Oxycodone, Cephalexin and Ondansetron following the performance of left shoulder surgery on October 9, 2024 for Assignor (EO/OE), a 32 year-old male passenger, in connection with treatment of injuries sustained in a motor vehicle accident on November 25, 2023. Respondent timely denied Applicant's claim based on a peer review dated November 15, 2024 and an Independent Medical Examination ("IME") on May 23, 2024 by Dr. Howard Kiernan.

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim for the prescription medications since the left shoulder surgery was not medically necessary. I disagree. The issue of medical necessity for the facility fee for the left shoulder was previously addressed by this Arbitrator in the linked case *Global Surgery Center LLC v. State Farm Mutual Automobile Insurance Company*, 17-24-1377-6759. In that case, I concluded that I was not persuaded by the same peer review and IME reports by Dr. Kiernan, submitted by Respondent in support of its denial. My conclusion remains unchanged.

In the above-referenced case, I stated as follows:

In order to support a defense of lack of medical necessity, the respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Dist. 2014). It is the respondent's burden to demonstrate lack of medical necessity, which, if established, shifts the burden of persuasion to the applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006); A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11th Dist. 2007).

Furthermore, a respondent's peer review must set forth more than just a conclusory or basic recitation of the expert's opinion. It is well-settled that a peer review is deficient

when it fails to set forth the generally accepted medical practice and how the provider deviated from those standards. See Elmont Open MRI & Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 23 Misc.3d 1110(A)(Dist. Ct. Nassau Co. 2009); Nir v. Allstate, 7 Misc.3d 544 (Civ. Ct. Kings Co. 2005).

Dr. Kiernan noted that "The claimant received 62 physical therapy sessions to the left shoulder from 11/29/2023 through 10/30/2024." He stated that "On 04/04/2024, an MRI of the left shoulder was conducted by John T. Regney, M.D., at Dynamic Medical Imaging, P.C. Impression: "Anterior downsloping of the acromion process which may cause subacromial impingement. Partial thickness tearing of the supraspinatus tendon. Subdeltoid bursitis."

He further noted that "On 05/23/2024, I conducted an Independent Orthopedic Medical Examination on this claimant. The physical examination of the left shoulder revealed no heat, swelling, effusion, erythema, or crepitus. There was no complaint of tenderness upon palpation. All ranges of motion were within normal limits. Multiple orthopedic tests, including Hawkins/Kennedy Impingement, Neer Impingement Maneuver, Cross Arm Adduction, Empty Can (lobe's) test, Scapular Winging, Drop Arm, O'Brien, Painful Arc, and Atrophy of Deltoid were noted as negative. Rotator cuff strength was noted as 5/5. Based on my physical examination findings, I diagnosed the claimant with the resolved sprain/strain of the left shoulder, and I concluded that there was no need for further orthopedic treatment, including physical therapy, massage therapy, injections, surgery, office visits, diagnostic testing, prescription medications, home care services, special transportation, and durable medical equipment/supplies."

Dr. Kiernan continued, "On 06/26/2024, the claimant presented to Robert D. Haar, M.D., at Haar Orthopedics and Sports Medicine, P.C., with complaints of pain in the left shoulder. The physical examination of the left shoulder revealed no bruises, swelling, abrasions, or ecchymosis, moderate tenderness, muscle strength 4/5, decreased range of motion, positive Neer's test, O'Brien's, and Hawkins test. The MRI report of the left shoulder dated 04/04/2024 was reviewed during this visit. The clinical impression was pain in the left shoulder. The claimant was recommended for left shoulder arthroscopy as a treatment plan."

He added that "On 09/03/2024, the claimant presented to Robert D. Haar, M.D., at Haar Orthopedics and Sports Medicine, P.C., with complaints of pain in the left shoulder. The physical examination of the left shoulder revealed no bruises, swelling, abrasions, or ecchymosis, moderate tenderness, muscle strength 4/5, decreased range of motion, positive Neer's test, O'Brien's, and Hawkins test. The MRI report of the left shoulder dated 04/04/2024 was reviewed during this visit. The clinical impression was pain in the left shoulder. The claimant was recommended for left shoulder arthroscopy as a treatment plan." He noted that The supply at issue was provided on the date of the surgery.

Dr. Kiernan reiterated his IME findings and asserted that the "findings documented on the MRI were already resolved as per my IME dated 05/23/2024 and did not warrant an urgent surgical intervention. The partial thickness tearing of the supraspinatus tendon can be treated conservatively. No instability, muscle atrophy, or crepitus was noted during my examination. There were no significant physical examination findings noted in this case, where an urgent surgical intervention would have been helpful. The need for surgery was because the treating physician reviewed the MRI report conducted before the IME, and the claimant complained of left shoulder pain. In this case, the treating physician gave an inappropriate treatment recommendation for the left shoulder as the left shoulder symptoms were already resolved, as per my IME dated 05/23/2024."

He further asserted that "The standard of care, in this case, was to treat the claimant as per the conditions. Dr. Mills performed surgery on a claimant whose sprain-stains injuries of the left shoulder related to the motor vehicle accident on 11/25/2023 were already resolved. No MRI was performed after the IME, which suggests that any irrecoverable damage might have occurred to the left shoulder, requiring emergent surgical intervention. Therefore, the left shoulder arthroscopy performed deviated from the standard of care and was not medically necessary in this case."

Dr. Kiernan concluded that "it is evident that the treating physician gave an inappropriate treatment recommendation for the left shoulder arthroscopy, as the left shoulder symptoms were already resolved as per my IME." He added that since the shoulder surgery was not medically necessary, the associated facility fee and anesthesia were also not medically necessary.

In further support of its defense, Respondent submitted Dr. Kiernan's IME report dated May 23, 2024.

I find that Dr. Kiernan's peer review and IME report were sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to rebut Dr. Kiernan's assertions. See A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., supra.

In support of its claim, Applicant submitted the documents contained in the ADR Center including operative report and rebuttal to the peer review and IME by Dr. Edward Mills, examination report by Dr. Robert Haar and MRI report. Respondent also submitted the records reviewed by Dr. Kiernan. I was persuaded by the medical evidence that the left shoulder surgery and associated facility fee were warranted.

Dr. Mills asserted that "Though, Dr. Kiernan noted all normal findings in his IME; the post-IME medical records show that the patient's left shoulder condition was certainly not resolved at the time of IME. The post-IME evaluation performed on 6/26/2024 noted that the patient had pain in the left shoulder. Examination of the left shoulder revealed moderate tenderness, diminished muscle strength, positive Neer's test, O'Brien's, and Hawkins test. Also, the intraoperative findings noted the presence of rotator cuff tear, labral tear, bursitis, adhesions, synovitis, etc. (please see the operative report of the left shoulder arthroscopy, dated 10/9/2024). These findings indicate that the patient required further treatment including surgery until the patient's condition is fully resolved."

He further asserted that "Dr. Kiernan's impressions of this patient's injury as a mere left shoulder sprain/strain are not proper reflections of the patient's MRI findings."

Dr. Mills further cited literature supporting the use of surgical intervention to treat Assignor's condition and concluded that the post-IME physical examination findings established the necessity for the surgery.

I find that Dr. Mill's rebuttal meaningfully referred to and rebutted the conclusions set forth in the peer review report. See High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A) (App. Term 2d, 11th & 13th Dists. 2010). I was persuaded that Assignor failed a course of conservative treatment and that surgical intervention was appropriate.

Furthermore, I find that the medical records submitted by Respondent refuted Dr. Kiernan's opinion that at the time of the IME Assignor's left shoulder injury had resolved. The examination report by NP Terrane, one week after the IME, noted ongoing subjective shoulder complaints and reduced strength in the shoulders and Dr. Haar's examination one month after the IME also noted ongoing subjective complaints and objective findings related to the left shoulder. In addition a EMG/NCV consultation performed on May 15, 2024 also noted reduced motor strength in the shoulders. Therefore, I find that Applicant satisfied its burden and is entitled to reimbursement for the facility fee.

Likewise, in the instant case, Respondent relied on the same peer review and IME and Applicant submitted a rebuttal to the peer review by Dr. Robert Haar, wherein he made similar arguments as Dr. Mills in the above-referenced case. Therefore, for the reasons noted above, I find that Applicant satisfied its burden and refuted Dr. Kiernan's peer review and IME findings and is entitled to reimbursement for the medications provided postoperatively.

Accordingly, Applicant's claim is granted in its entirety.

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
	All Med Rx Inc d/b/a Lilly Rx	10/09/24 - 10/09/24	\$1,432.25	Awarded: \$1,432.25
Total			\$1,432.25	Awarded: \$1,432.25

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/16/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from December 16, 2024, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, 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 an attorney's fee in accordance with 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 Westchester

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

08/13/2025
(Dated)

Robyn McAllister

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:
caba1e3ec64793b02fe1184b14acc669

Electronically Signed

Your name: Robyn McAllister
Signed on: 08/13/2025