

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Ambulatory Surgery Center LLC
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-25-1381-9987

Applicant's File No. 00144081

Insurer's Claim File No. 32-49G7-62P

NAIC No. 25178

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (MA/AM)

1. Hearing(s) held on 08/20/2025
Declared closed by the arbitrator on 08/29/2025

Sasha Hochman, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Theresa Carrubba, Esq. from Sarah C. Varghese & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$5,296.65**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended, on consent of the parties, pursuant to the fee schedule to \$5,292.93.

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

3. Summary of Issues in Dispute

EIP (MA/AM), is a 25-year-old female who was involved in a motor vehicle accident on April 26, 2023. Following the accident, EIP sought medical treatment. On November 7, 2024, EIP underwent a thoracic discectomy.

Applicant's reimbursement claim was denied by Respondent based on a peer review by Cyrus Kao, M.D., dated 12/3/24.

The issues presented: Whether Applicant is entitled to no-fault reimbursement for health services provided, denied by Respondent based on a peer review? Whether collateral estoppel is applicable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record 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. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an 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 case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

The hearing in this case was conducted on 8/20/25. Respondent was afforded additional time to upload documentary proof to establish the amount of PIP benefits remaining on the subject policy. Accordingly, Respondent's post-hearing submission will be considered in my award that follows.

EIP (MA/AM), is a 25-year-old female who was involved in a motor vehicle accident on April 26, 2023. Following the accident, EIP sought medical treatment. On November 7, 2024, EIP underwent a thoracic discectomy.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary

Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). I find that applicant established its *prima facie* case of entitlement to No-Fault compensation for its claim. The burden then shifts to the respondent to prove its defense.

Applicant's reimbursement claim was denied by Respondent based on a peer review by Cyrus Kao, M.D., dated 12/3/24.

Medical Necessity

In order to support a lack of medical necessity defense, respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician'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 2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which, if established, shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 Slip Op 50137(U) (N.Y. City Civ. Ct. 2012.) "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

In a prior award (AAA Case No.: 17-25-1384-9032), involving EIP (MA/AM), the medical necessity for the surgeon's fees associated with the thoracic discectomy, performed on 11/7/24, and Respondent's defense based on Dr. Kao's peer review of 12/3/24, I found, in pertinent part, the following:

...In support of its contention that the thoracic discectomy was not medically necessary, Respondent basis its defense on a peer review report by Cyrus Kao, M.D., dated 12/3/24. Dr. Kao avers that given the experimental nature of percutaneous discectomies, the operative procedure and associated intraoperative monitoring, and anesthesia, would not be medically necessary. The thoracic MRI was not available for review. In this case, clinical documentation fails to reflect that there is any thoracic radiculopathy or abnormal neurological examinations. Thoracic radiculopathy clinically presents as radiating pain to the anterior chest in a thoracic dermatomal pattern. This is not reflected in clinical documentation, and as such, Dr. Kao concludes that the thoracic discectomy was not medically necessary, and not according to the medical standard of care.

To rebut the peer review opinion and conclusion, Applicant relies on a rebuttal by Dr. Leon Reyfman, M.D., dated 4/23/25. Dr. Reyfman reports that EIP came under the care of his office on May 30, 2024, for unresolved complaints of lower back pain. Based on restrictions in activities of daily living; an MRI of the lumbar spine on 8/28/24; and continued subjective complaints and positive examination findings, EIP underwent a lumbar discectomy at L4-5 on 9/12/24. EIP was also experiencing middle back pain exacerbated by mechanical type activities. The examination revealed tenderness, muscle spasm, decreased muscle strength, and a positive straight leg raise test. An MRI of the thoracic spine on 10/15/24 revealed T3-4 through T9-10, and T10-11 through T12-L1, disc bulges deforming the ventral thecal sac. Evaluations on 11/4/24 and 11/7/24 revealed EIP with continued subjective complaints and positive exam findings. Dr. Reyfman avers that the thoracic discectomy was recommended due to EIP's continued significant pain and functional limitations despite physical therapy, medication treatment, and a trial of epidurals. Dr. Reyfman disagrees with the peer review conclusion, noting that Dr. Kao review of medical records included physical therapy notes from 5/2/93 to 7/18/24. Conservative therapy was exhausted, and the percutaneous discectomy was recommended. Citing medical authority, Dr. Reyfman reports that a percutaneous discectomy is a minimally invasive procedure that was developed to not only reduce pain, but to treat the underlying condition as well. The percutaneous discectomy, and annuloplasty, were necessary in this case to provide pain relief to EIP who presented with persistent pain for more than 3 months despite conservative modalities. Based on the foregoing, Dr. Reyfman concludes that the thoracic discectomy and associated services, performed on 11/7/24, were medically necessary.

Upon a review of the submissions and medical records and considering the arguments presented by the parties' representatives, I find that Applicant has submitted sufficient credible evidence to rebut the peer review of Dr. Kao. The rebuttal specifically addressed the contentions raised by the peer review. I find the rebuttal to the peer review sufficient to meet the Applicant's burden on the issue of medical necessity. It is also arguable that the peer review is factually sufficient to meet the burden of persuasion. Dr. Kao was not provided with EIP's thoracic spine MRI. Without a review of that diagnostic report, I find the peer review lacks essential documentary evidence for Dr. Kao to render a persuasive opinion.

In addition, I am persuaded by EIP's medical records that EIP was having persistent spinal difficulties despite a course of conservative treatment. Since the recommendation for the thoracic discectomy is supported by objective medical findings and rationale, I defer to the treating doctor's determination that the operative procedure was medically necessary.

Based on the foregoing, Applicant's reimbursement claim, for date of service 11/7/24 is granted...".

It is well settled that res judicata and collateral estoppel are applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar re-litigation of the same claim or issue. Collateral estoppel bars a party from litigating again in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity. See, Buechel v. Bain, 97 N.Y.2d. 295, 303 (2001). Two requirements must be met before collateral estoppel can be invoked: (1) There must be an identity of issue, which has necessarily been decided in the prior action and is decisive of the present action; and (2) there must have been a full and fair opportunity to contest the decision now said to be controlling. *Id.* at 303-304, Comprehensive Med. Care of NY v. Hausknecht, 55AD3d 777(2008). The party invoking collateral estoppel has the burden of establishing that the issue litigated is identical to the issue on which preclusion is sought. See Concord Delivery Service, Inc. v. Syosset Props, 19 Misc3d 40 (App Term, 9 & 10 Jud Dists 2008).

The doctrine of collateral estoppel is applicable herein. It mandates that a party may not reassert an issue that has been determined in a prior arbitration, whether or not the tribunals or causes of action are the same. See, Ryan v. New York Telephone, 42 N.Y.2d 494, 478 N.Y.S.2d 823, 467 N.E.2d 487 (1984). Further, the Court of Appeals has held that issues resolved by earlier arbitration are subject to the doctrine of collateral estoppel. Rembrandt Industries, Inc. v. Hodges International, Inc., 38 N.Y.2d 502, 381 N.Y.S.2d 451 (1976).

I find that the doctrine of collateral estoppel is controlling in this case, as the issue of medical necessity for health services provided, is the same issue resolved in the prior arbitration (AAA Case No.: 17-25-1384-9032). The issue in the prior arbitration involved EIP (MA/AM), the subject accident, the necessity for the thoracic discectomy, and the same defense by Respondent based on the peer review of 12/3/24 by Dr. Kao. I find that Respondent had a full and fair opportunity to contest the determination. As

such, I find, based upon my review of the record in this case, and the prior arbitration decision noted above, that the health services provided by Applicant were medically necessary.

Even if collateral estoppel was not applicable, it is noted that in this case, Applicant submits a rebuttal, dated 6/23/25, by Dmitriy Dvoskin, M.D. Dr. Dvoskin details EIP's history, positive examination findings, persistent subjective complaints, and MRI findings. Respondent's addendum, dated 7/16/25, by Dr. Kao is also reviewed. I find that due to EIP's positive, objective clinical findings, and imaging results, and citing medical authority, Dr. Dvoskin persuasively establishes the medical necessity for the thoracic discectomy.

Accordingly, based on all of the foregoing, and upon a preponderance of the evidence in the electronic case file and following consideration of the arguments raised at the hearing, I find that the health services provided by Applicant on 11/7/24, were medically necessary.

Applicant's reimbursement claim is granted.

Respondent claims that a limited amount of PIP benefits remain on the subject policy. Respondent submits an affirmation from Claims Specialist Stacey Brixa, dated 8/21/25. Based on a review of records, Affirmant states that the policy limits applicable to the injured party "are close to exhaustion. To date \$222.19 is remaining on the \$50,000 policy".

Based on the foregoing, for date of service 11/7/24, Applicant is awarded the amount of \$222.19.

This decision is in full disposition of all claims for no-fault benefits presently before this arbitrator.

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
	Island Ambulatory Surgery Center LLC	11/07/24 - 11/07/24	\$5,296.65	\$5,292.93	Awarded: \$222.19
Total			\$5,296.65		Awarded: \$222.19

B. The insurer shall also compute and pay the applicant interest set forth below. 01/14/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay to Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

For cases filed on or after February 4, 2015, the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon, subject to no minimum fee, and a maximum fee of \$1,360.00. 11 NYCRR 65-4.6(d).

- 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 Putnam

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

08/29/2025
(Dated)

Nicholas Tafuri

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:
66d97197c95f3d967213add364f51070

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 08/29/2025