American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Avraham Y. Henoch, M.D, P.C (Applicant)	AAA Case No.	17-25-1391-8796
	Applicant's File No.	3458779
- and -	Insurer's Claim File No.	0764934634
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Heidi Obiajulu, 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: Injured Party

1. Hearing(s) held on 09/04/2025
   Declared closed by the arbitrator on 09/04/2025

   Marcy Cohen, Esq. from Israel Purdy, LLP participated virtually for the Applicant

   Priscella Rivera, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$410.08**, 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 applicant seeks reimbursement of charges for an evaluation and management consultation (CPT code 99245) performed on 01/29/25, following a motor vehicle accident on 08/06/24. The respondent denied the claim based on the independent medical examination by Dr. Pierce Ferriter, MD, on 12/30/24, effective 01/20/25.

4. Findings, Conclusions, and Basis Therefor

The decision is based on the documents in the Modria ADR Electronic Case folder maintained by the American Arbitration Association (hereafter referred to as AAA) as of the hearing.

The applicant, as assignee of the Injured Party, seeks reimbursement, with interest and counsel fees, under the No-Fault Regulations, for an evaluation and management consultation (CPT code 99245) performed on 01/29/25, for $410.08.

The respondent insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., the respondent was obligated to reimburse the Injured Party (or assignee) for all reasonable and necessary medical expenses arising from the use and operation of the insured vehicle.

This case arose from a motor vehicle accident on August 06, 2024, in which the Injured Party (KO), a then 42-year-old female, sustained multiple injuries, including to the head, neck, upper back, lower back, and right shoulder and knee while occupying the insured vehicle as a passenger when it was rear-ended by the adverse vehicle. After the accident, she did not seek emergency treatment.

On 08/06/24, the Injured Party visited an urgent care facility and was evaluated, treated, released, and referred to outpatient care.

On 08/07/24, the applicant initially evaluated the Injured Party and reported that she presented with complaints of pain in her right shoulder and knee, as well as pain in her back. He noted the Injured Party had trouble pushing and pulling, lifting, and dressing because of the shoulder pain. He also noted that the Injured Party had difficulty walking and bearing weight due to the right knee pain and injury. Finally, he noted that the Injured Party's back pain caused trouble bending, sitting for prolonged periods, trouble standing, and trouble sleeping. His physical examination revealed marked spasms and moderate to marked tenderness in the lumbar spine with decreased ranges of motion and a positive Lseagues' test [more on the right], moderate tenderness in the right shoulder, decreased right shoulder range of motion and motor strength deficits (graded 2.5/5), and marked tenderness, decreased flexion and extension in the right knee with a positive McMurray's test, Patellar tap, and Patellar grind test, with diminished motor strength (2.7/5), and abnormal ambulation. Based on the exam, the applicant commenced the Injured Party on conservative care, including prescribing DME and prescription medication.

On 08/07/24, the Injured Party went to Aqua Rehabilitation PT, PC for an initial physical therapy evaluation. She complained of 9/10 neck pain, mid-back pain, and lower back pain, 10/10 right shoulder pain, and 8/10 right knee pain. Based on the exam findings, the Injured Party was commenced on physical therapy.

On 09/13/24, a lumbar spine MRI study revealed a broad-based posterior protrusion with annular tear of the L5-S1 disc, causing narrowing of the central canal and neural foramina, bilaterally, a diffuse bulge of the L4-5 disc, causing narrowing of the central canal and neural foramina, bilaterally, and a diffuse bulge of the L3-4 disc.

Also on 09/13/24, a right shoulder MRI revealed mild degenerative change in the acromioclavicular joint, mild effusion of the subacromial bursa, moderate tendinitis of the insertional fibers of the supraspinatus, eburnation of the bursal surface fibers of the supraspinatus, mild tendinitis of the insertional fibers of the infraspinatus with a small concealed interstitial delamination, mild tendinosis with subtle tendinitis of the insertional fibers of the subscapularis.

On 09/19/24, Dr. Danilo Sotelo-Garza, MD [or Moshe Musheyev, NP], performed an orthopedic evaluation of the Injured Party and reported she presented with complaints of constant right shoulder pain described as sharp, stabbing, dull, and achy with stiffness and weakness. Reportedly, the Injured Party had trouble sleeping at night due to the pain. The pain worsened with range of motion but improved with medication and physical therapy. Physical examination revealed tenderness over the supraspinatus tendon region, AC joint, trapezius, and proximal biceps tendon, no swelling, heat, erythema, deformity, or crepitus, a negative Drop arm test, empty can test, deltoid atrophy, impingement sign, and Lift-off test, positive Cross-over test, Yergason test, O'Brien test, and Hawkins test, restricted ranges of motion [see the report for ranges], and no motor or sensory deficits. Based on the exam, the diagnoses were internal derangement of the right shoulder, shoulder tendinitis of the right shoulder, pain in the right shoulder, injury to the right shoulder, and joint effusion in the right shoulder. The treating provider recommended imaging, cold compresses for the right shoulder, continued use of anti-inflammatory and muscle relaxant medications, steroid injections for pain management, continued conservative care, and a follow-up.

On 09/25/24, Dr. Zinaida Goldshteyn, DC initially revaluated the Injured Party and reported that she presented with complaints of 8/10 constant, sharp, stabbing, shooting, and severe neck pain referring to the bilateral upper extremities with associated numbness and tingling sensation in the right upper extremity, 08/10 constant, sharp, stabbing, shooting and severe upper/mid-back pain, 8/10 constant, sharp, stabbing, shooting, and severe lower back pain referring to bilateral lower extremities. Physical examination revealed trigger points, increased muscle spasms/tone, with decreased cervical spine range of motion and positive Maximum Compression test, shoulder depression test, Jackson compression test, cervical distraction test, and manual percussion test, trigger points, increased muscle spasms/tone, with decreased dorsolumbar range of motion with positive Manual Percussion test, Kemp's test, SLR test, Nachlas test, and Milgram test. The neurological exam revealed decreased sensation and diminished deep tendon reflexes in the right upper and lower extremities and decreased muscle strength in the bilateral upper and lower extremities. The diagnoses were segmental and somatic dysfunction of the cervical, thoracic, and lumbar spine, midcervical and lumbar radiculopathy, sciatica with lumbago, right side, lumbar

disc displacement, sprain of the cervical, thoracic, and lumbar spine ligaments, strain of muscle, fascia, and tendon of the neck and low back, and muscle spasm. Based on those findings, Dr. Goldshteyn, DC, recommended and performed electrodiagnostic testing.

The EMGs/NCVs to the upper and lower extremities performed on 09/25/24 revealed evidence consistent with right C6-7 and L4-5 radiculopathy.

On 09/28/24, the applicant re-evaluated the Injured Party and reported that the pain in her back, right shoulder, and knee persisted. His exam was essentially the same.

The Injured Party continued receiving conservative treatment.

On 10/17/24, Dr. Solomon Halioua, MD, evaluated the Injured Party and reported she presented with persisting middle and lower radicular back pain, right shoulder pain, and right knee pain. He reviewed and discussed the lumbar spine MRI study. His physical examination revealed abnormal sensation at the right L5 dermatome, a radicular pattern to pain in approximately bilateral L4-L5 right side greater than left, motor deficits in the right TA and hal. extensor muscles[graded 4/5], severe bilateral tenderness overlying the facets of L3 through S1, facet loading maneuvers were positive, a positive SLR test at 30 degrees on the right and 60 degrees on the left, a positive Lasegue sign, bilaterally, sciatic notch tenderness bilaterally, severe tenderness overlying the perithoracic region of T8through T12, a positive Neer Impingement sign in the right shoulder with subacromial tenderness and positive Apley Scratch test, and tenderness in the right knee overlying the MCL greater than LCL of the right knee, LCL tenderness in the popliteus, fibocollateral bicep femoral tendon, and positive infrapatellar testing and Valgus stress testing. Based on the exam, Dr. Halioua, MD, diagnosed thoracic spine pain, thoracic radiculopathy, lower back pain, lumbar radiculopathy, paresthesia of the skin, right knee pain, right shoulder pain, and unspecified motor vehicle accident. He recommended a lumbar discectomy at right L4-L5 and annuloplasty.

On 11/14/24, Dr. Halioua, MD re-evaluated the Injured Party and reported that she still had severe lumbosacral pain [rated 9/10] radiating to the bilateral lower extremity with weakness in the right leg, right knee pain [rated 7-8/10], and thoracic pain [rated 6-7/10]. The examination was essentially unchanged. Again, surgical procedures to the lumbar spine were recommended.

Initially, the respondent reimbursed various healthcare providers but began questioning the Injured Party's need for ongoing medical care. So, the respondent scheduled an independent medical examination (hereafter referred to as IME) by Dr. Pierce Ferriter, MD, on 12/30/24. He opined that the Injured Party's cervical/thoracic/lumbar spine sprains/strains were resolved, as well as the right shoulder and knee sprains/strains, based on his negative and normal IME findings. Therefore, he concluded that the Injured Party required no further orthopedic treatment, including physical therapy, massage therapy, surgery, injections, household help, special transportation, durable medical equipment, prescription medication, ambulette/ambulatory services, or diagnostic testing. The IME examiner also opined that the Injured Party reached an end result of orthopedic treatment. The IME effective cutoff date was 01/20/25.

On 01/29/25, the applicant performed the disputed evaluation and management (hereafter referred to as E/M) consultation.

After that, the applicant submitted its claim form to the respondent, seeking reimbursement of its claim.

Within 30 days after receiving the applicant's claim form, the respondent denied reimbursement based on the IME by Dr. Pierce Ferriter, MD, on 12/30/24, effective 01/20/25.

After it received the respondent's denial, the applicant commenced this arbitration seeking reimbursement of its claim.

At the outset, I find that the applicant established its prima facie case with the submission of its claim form setting forth the fact and amount of the loss sustained and the copy of the respondent's denial of claim form, which demonstrates that the respondent received the applicant's claim form, that more than 30-days elapsed since its receipt of same, and that the respondent denied reimbursement of the applicant's claim, which shows that the applicant's claim was overdue. See Insurance Law section 5106 [a]; Viviane Etienne Medical Care, PC v. County-Wide Ins. Co 25 N.Y.3d. 498, (NY, June 10, 2015), Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 A.D.3d. 1168, (N.Y.A.D. 2nd Dept., November 30, 2010).

Once an applicant establishes a prima facie case, the burden shifts to the insurer to prove its defense.

However, even before determining whether the respondent met its burden of proof, it must first be determined whether the respondent's defense survives preclusion.

I find that the respondent's lack of medical necessity defense is preserved based on the uncontested, timely, and legally sufficient denial asserting that defense.

Therefore, the issue is whether the respondent met its burden of proof in establishing its defense.

To establish its lack of medical necessity defense, the respondent relies on the IME by Dr. Pierce Ferriter, MD, on 12/30/24, effective 01/20/25. To rebut that defense, the applicant relies on the report by the applicant on 01/29/25, including the treating provider's reported positive clinical findings and conclusions, and Dr. Halioua's 11/14/24 report.

Reviewing the relevant evidence in the record and considering the oral arguments made by the parties, I find as follows:

In determining whether an insurer met its burden of proof in establishing its lack of medical necessity defense, the courts have found that an insurer must submit an IME report/peer review with a detailed basis and medical rationale for the denial of benefits to prevail. SeeVladimir Zlatnick, M.D., P.C. v. Travelers Ins. Indemnity Co., 12 Misc.

3d 128A (App. Term 1stDept. 2006) and Nir v. Allstate, 7 Misc. 3d 544, 546-47 (Civ. Ct., Kings County. 2005). ("At a minimum, (the respondent) must establish a factual basis and medical rationale for the lack of medical necessity of (applicant's) services"). Once the respondent submits an IME report or peer review with a sufficient factual basis and medical rationale, the courts have routinely found that the respondent has established its prima facie defense that the disputed medical service is medically unnecessary. A Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co., 16 Misc. 3d 131(A), (N.Y. Sup. App. Term Jul 03, 2007). Then, the burden of persuasion regarding the medical necessity of the medical services shifts to the applicant to submit competent medical evidence to refute the respondent's prima facie defense that the disputed medical service/test was medically unnecessary. Compare Pan Chiropractic PC v. Mercury Ins. Co., 24 Misc. 3d. 136 (A) (July 9, 2009). However, as Judge Aaron Maslow determined in the case of American Tr. Ins. Co. v. Right Choice Supply, Inc., 2023 N.Y. Slip Op 23039, (N.Y. Sup., Kings County, February 9, 2023), Pan Chiropractic, PC, et. al, supra. is not controlling in arbitrations because that case applies to summary judgment motions and not no-fault arbitrations. He reasoned no-fault arbitrations "*…entail final determinations, akin to a bench trial where the trial court hears the evidence and makes its own findings of fact…*"

Applying the above case law and criteria to the medical evidence in the record, I find that the respondent arguably rebutted the initial presumption of medical necessity of the disputed E/M consultation on 01/29/25 with the IME report by Dr. Pierce Ferriter, MD because he set forth a sufficient factual basis and medical rationale to support his conclusions that the Injured Partys' sprains/strains to the cervical/thoracic/lumbar spine, right shoulder and right knee were resolved. The IME examiner considered the normal IME findings from his comprehensive exam, reviewed the cited medical records, and discussed the history of the accident, treatment history, medical and surgical histories, medications, employment history, and presenting complaints. I find that such a review of records, normal IME findings, and discussion arguably set forth a sufficient factual basis and medical rationale to support the IME examiner's conclusions that no further orthopedic treatment was medically necessary.

So, the issue is whether the applicant refuted the respondent's defense and evidence.

To refute the respondent's IME and evidence, the applicant relies on the exam report by the applicant performed on 01/29/25 and Dr.Halioua's 11/14/24 report, which are contemporaneous to the IME.

In his exam report for the date of service 01/29/25, Dr. Henock reported the Injured Party presented with pain in her right shoulder and knee, as well as pain in the back. He noted the Injured Party had trouble pushing and pulling, lifting, and dressing because of the shoulder pain. He also noted that the Injured Party had difficulty walking and bearing weight due to the right knee pain and injury. Finally, he noted that the Injured Party's back pain caused trouble bending, sitting for prolonged periods, and trouble standing. His physical examination revealed marked spasms and moderate to marked tenderness in the lumbar spine with decreased ranges of motion and a positive Lseagues' test, moderate tenderness, decreased right shoulder range of motion and motor strength deficits (graded 2.5/5), and moderate tenderness, decreased flexion and extension in the

right knee with a positive McMurray's test, Patellar tap, and Patellar grind test, with diminished motor strength (2.6/5), and abnormal ambulation. Based on his exam, Dr. Henock, MD, diagnosed lumbar neuropathies, lumbar spasms, right shoulder tendinitis, right shoulder rotator cuff pathology, right knee tendinitis, and right knee internal pathology. He ordered studies, refilled prescriptions, and recommended ongoing medical care.

In his report for an exam on 11/14/24, Dr. Halioua recommended PMR procedures and reported radicular lumbar pain and significant positive clinical findings, including significant objective findings of positive orthopedic testing, diminished DTRs, radicular pain, and moderate to severe tenderness. He diagnosed more than sprains and strains and recommended PMR injection.

Notably, the IME examiner indicated that the Injured Party received injections to the mid back and was scheduled to receive injections to the lower back. Also, the IME examiner only opined whether the Injured Party required ongoing treatment for sprains and strains, but not the diagnosed lumbar radiculopathy or other diagnosed conditions.

Taking into account the totality of the medical evidence and the parties' oral arguments, I find that the applicant refuted the respondent's evidence based on the positive clinical findings reported by the applicant, the diagnosed condition of lumbar radiculopathy and other conditions more severe than sprains and strains, Dr. Halioua's report with significant positive clinical findings for an exam on 11/14/24, and a deference afforded the treating provider's therapeutic decision [becuase they had a superior understanding of the Injured Party's condition and medical needs].

Accordingly, for the above reasons, I find in favor of the applicant of $410.08 as reimbursement of its claim.

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
	Avraham Y. Henoch, M.D, P.C	**01/29/25 - 01/29/25**	**$410.08**	**Awarded: $410.08**
Total			**$410.08**	**Awarded: $410.08**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/18/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The applicant's award of $410.08 shall bear interest at a rate of two percent per month, calculated on a pro-rata basis using a 30-day month from03/18/25, the date the applicant initiated this arbitration,to the date of the payment of the award, under 11 NYCRR 65-3.9 (a).

C. Attorney's Fees

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

As this matter was filed **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 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 NJ
SS :
County of Union

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

09/04/2025
(Dated)

Heidi Obiajulu

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:
8584a781494ba023267cb75c8a05887d

Electronically Signed

Your name: Heidi Obiajulu
Signed on: 09/04/2025