

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Shoulder Knee Orthopedics
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-25-1396-3807
Applicant's File No. SYL25-102454
Insurer's Claim File No. L01-N203-2499712
NAIC No. 36447

ARBITRATION AWARD

I, Gregory Watford, 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 (EC)

1. Hearing(s) held on 09/03/2025
Declared closed by the arbitrator on 09/18/2025

Sam Yusupov from Yusupov Law Firm PLLC participated virtually for the Applicant

Michelle Randazo from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$559.93**, 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 dispute arises from the underlying automobile accident of January 19, 2025, in which the Assignor, then a 30-year-old male, was a driver. As a result of the impact, he complained of multiple injuries including his left shoulder. Thereafter, Assignor sought medical attention where he was evaluated, recommended to begin receiving conservative care treatments, and referred for left shoulder surgery.

On March 14, 2025, Assignor underwent left shoulder arthroscopic surgery. In dispute in this case are the Physician Assistant's fees related to the surgery. Applicant timely submitted the bill to Respondent for payment in an amount totaling \$559.93.

Respondent timely denied the claim based upon the peer review of Dr. Howard Kiernan, dated 4/7/25. Respondent also argued that Applicant billed in excess of the amount permitted under the fee schedule.

The issues to be decided in this base are:

-Whether Applicant established entitlement to No-Fault compensation for the Physician Assistant's fees related to left shoulder surgery services provided to upon Assignor.

-Whether Respondent made out a prima facie case of lack of medical necessity and, if so, whether Applicant rebutted it.

-Whether Respondent established that Applicant billed in excess of the Fee schedule.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions and documents contained in the American Arbitration Association's ADR Center Electronic Case File (ECF). This matter was decided based upon the submissions of the parties as contained in the ECF, as well as upon the oral arguments of the parties at the time of the hearing. All documents contained in the ADR folder that were submitted at least 30 days prior to the hearing date are hereby incorporated into this hearing and were considered in reaching my findings. These submissions constitute the record in this case. Evidence relating to the issues of fraud, staged accidents, jurisdiction, fee disputes, proof of paid claims, and policy exhaustion need not be submitted at least 30 days prior to the hearing date. There were no witnesses.

Linked Cases

It should be noted that there were two linked cases under AAA case #17-25-1396-3832 and 17-25-1396-3807 which were heard by this arbitrator on the same date. Both cases involve the same Applicant, Assignor and Respondent. Both cases raise the same threshold issue that must be decided based upon the same facts. Therefore, I will consider both submissions as they relate to this issue in order to make my decision in this matter.

Pursuant to Insurance Law § 5106(a) and the Insurance regulations, an insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.8[c]; *see also* 11 NYCRR 65-3.5). Infinity Health Products, Ltd. v. Eveready Ins. Co., 67 A.D.3d 862, 864, 890 N.Y.S.2d 545, 547 (2d Dept. 2009). A claimant's prima facie proof of claim for no-fault benefits must demonstrate that the prescribed claim forms were mailed to and received by the insurer and are overdue. Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 506, 14 N.Y.S.3d 283, 290 (2015). Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bills.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim. Viviane Etienne Med Care, PC v. Countrywide Ins. Co., Id. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See Citywide Social Work & Psych. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004, NY Slip Op 24034 (Civ. Ct., Kings County 2004).

Medical Necessity - Peer Review

A presumption of medical necessity attaches to a timely submitted no fault claim. Elmont Open MRI & Diagnostic Radiology, P.C. v. State Farm Ins. Co., 26 Misc.3d 1211(A), 906 N.Y.S.2d 779 (Table), 2010 N.Y. Slip Op. 50053(U) at 3, 2010 WL 157564 (Dist. Ct. Nassau Co., Fred J. Hirsh, J., Jan. 6, 2010).

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [N.Y. App. Term, 2nd & 11th Jud. Dists 2003]; Kings Medical Supply Inc. v. Country Wide Insurance Company, 783 N.Y.S. 2d at 448 & 452; Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128 [N.Y. App. Term, 2nd and 11th Jud Dists 2003]).

The purpose of a peer review is to determine whether the service/test provided was medically necessary. The peer reviewer discusses the standard of care in the medical community and offers his/her opinion as to why the service/test at issue falls outside of that standard of care. The peer reviewer buttresses his/her opinion with authoritative texts, treatises, and articles, generally from peer-reviewed publications.

The courts have held that a peer review 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 medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See, Jacob Nir, M.D. v. Allstate Insurance Co., 7 Misc. 3d 544 (N.Y. City Civ. Ct. 2005).

According to the records in the ECF, Assignor was injured on 1/19/25 and complained of injuries to his left shoulder, right knee and right ankle. On 2/6/25, He was evaluated by Dr. Daniel Yoo, the referring physician, where he complained of back pain, left shoulder pain, and right ankle pain. Assignor was diagnosed with left shoulder impingement syndrome with possible rotator cuff tear and/or labral tear along with a differential diagnosis of medial deltoid ligament tear versus anterior talofibular ligamentous tear versus calcaneofibular ligamentous tear. He was recommended to begin receiving conservative care treatments.

Dr. Kiernan noted that Assignor was previously involved in a motor vehicle accident in August 2024 and underwent right shoulder surgery on October 10, 2024, where Dr. Yoo was also the treating physician for Assignor.

Assignor was referred for an MRI scan of the left shoulder to rule out rotator cuff tear and/or labral tear.

Assignor was re-evaluated by Dr. Yoo on 2/20/25, where he noted that the MRI scan documented a partial tear of the rotator cuff tendon in the region of supraspinatus and superior labral tear. Dr. Yoo discussed various treatment options with Assignor which included non-operative conservative care treatments versus operative treatment options. He noted that Assignor confirmed that he would like to proceed with left shoulder surgery. Assignor was instructed to continue with therapy including range of motion and strengthening exercises.

Assignor underwent left shoulder surgery on 3/14/25.

Dr. Kiernan concluded that the surgery in dispute, along with the associated assistant services and anesthesia services were not medically necessary. His primary argument was that the left shoulder surgery was prematurely performed, and Assignor did undergo an adequate course of conservative care treatments to the left shoulder prior to the surgery. He opined that Assignor should have received at least three to six months of conservative care treatment directed towards gaining full range of motion.

He further argued that the MRI findings did not warrant urgent surgical intervention as the injuries could be treated with a progressively challenging plan of conservative care treatment and non-surgical modalities.

He cited to medical literature which stated:

"Many people with rotator cuff tendinosis can be successfully treated with: • Physical Therapy • Anti-inflammatory medications • Activity modification and rest • A cortisone or steroid injection" (Rotator Cuff Tendinosis: Is a Cure Possible [Updated]; Last Updated September 22, 2021; by Howard J. Luks, MD)"

"Conservative treatment has been shown to be effective in many patients with rotator cuff tears. Nonsurgical care is often the first line of treatment of partial thickness tears, degenerative nontraumatic full-thickness tears, and massive irreparable tears. Suggested future directions could include continuing to determine specific predictors for failure of nonoperative treatment of rotator cuff tears and better exploration of physical therapy parameters needed for success including supervision, frequency and duration, specific exercises and interventions along with dosing." (Nonoperative Treatment of Rotator Cuff Tears, Rebecca N. Dickinson, PT, DPT, OCS, John E. Kuhn, MS, MD, Phys Med Rehabil Clin N Am 34 (2023) 335-355, <https://doi.org/10.1016/j.pmr.2022.12.002>)"*

"In most cases, the initial treatment for a superior labrum anterior-posterior tears (SLAP) injury is nonsurgical. Non-steroidal anti-inflammatory medication, Drugs like ibuprofen and naproxen reduce pain and swelling, Physical therapy, and Specific exercises will restore movement and strengthen your shoulder. Flexibility and range-of-motion exercises will include stretching the shoulder capsule, which is the strong connective tissue that surrounds the joint. Exercises to strengthen the muscles that support your shoulder can relieve pain and prevent further injury. This exercise program can be continued anywhere from 3 to 6 months and usually involves working with a qualified physical therapist." 'SLAP tears,' published in OrthoInfo-AAOS, by George S. Athwal, M.D., Matthew Daniel Budge, M.D., last reviewed in January 2024.

He further asserted "Dr. Yoo should have explained the advantages of cortisone administration in the left shoulder and further should have clarified why administering cortisone injections would provide benefits. It is the treating physician's responsibility to convince the patient to fit therapy modalities to serve a patient structure a closer view of clinical practice. It was not appropriate on Dr. Yoo's part to opt for left shoulder arthroscopy without considering the maximum potential benefit the claimant might have acquired in dealing with left shoulder symptoms with the help of cortisone injections."

I find that the peer review of Dr. Kiernan has set forth a sufficient factual basis and medical rationale for his opinion that the disputed MRI scans in this case were not medically necessary and therefore has established, prima facie, a lack of medical necessity for those services rendered by Applicant.

In A.B Med Servs., P.L.L.C. v. State Farm Mut Auto Ins. Co., 7 Misc. 3d 822, 795 N.Y.S 2d 843 (App Term, 2ndDept - 2005) citing Baumann v. Long Is. R.R., 110 A.D.2d 739, 741 487 N.Y.S.2d 833 (N.Y. App. Div., 2nd Dept 1985) the Court held that a plaintiff continues to bear the "burden of persuasion" and, if the carrier has satisfied the burden of coming forward, a "plaintiff must rebut it or succumb."); Crotona Hgts. Med., P.C. v. Geico Ins. Co., 25 Misc. 3d 142(A), 2009 NY Slip Op 52466(U) (N.Y. App. Term, 2nd Dept. 2009); AJS Chiropractic, P.C. v. Travelers Inc. Co., 25 Misc. 3d 140(A), 2009 NY Slip Op 52446(U) (App Term, 2nd Dept. 2009).

In order for an applicant to prove that the disputed expenses were medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. Ortho-Med Surgical Supply, Inc. v. Progressive Cas. Ins. Co., 2012 NY Slip Op 50149(U) (App Term 2d, 11th & 13th Jud Dists Jan. 24, 2012. High Quality Medical, P.C. v. Mercury Ins. Co., 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010).

Applicant did not submit a rebuttal and relied upon the medical records to establish medical necessity. Applicant's counsel made several arguments and noted that Assignor decided that he wanted to proceed with the surgery.

Counsel's arguments may have been more persuasive if they were supported by a rebuttal.

"[T]he failure to submit a rebuttal affidavit from plaintiff's expert physician showing the medical necessity of its billing in a non-conclusory manner and meaningful way, rebutting the issues raised in the insurer's IME and peer review reports, fails to demonstrate the existence of a triable issue of fact as to whether there was a lack of medical necessity for the medical services at issue (see Throgs Neck Multicare, P.C. v Mercury Ins. Co., 52 Misc 3d 138[a][App Term, 2nd Dept, 9th & 10th Jud Dists 2016]), and leaves the conclusions of defendant's medical experts un-refuted (see Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A][App Term, 2nd, 11th & 13th Jud Dists 2009])." Optimum Health Acupuncture, P.C. v. Integon National Ins. Co., 74 Misc.3d 1205(A), 2022 N.Y. Slip Op. 50068(U) at 2 (Dist. Ct. Suffolk Co., James F. Matthews, J., Jan. 5, 2022).

Based upon the foregoing, I find that the assertions of Dr. Kiernan set forth a factual basis and medical rationale for his determination that there was a lack of medical necessity for the left shoulder surgery was not rebutted by the Applicant. AJS Chiropractor, P.C. v. Travelers Ins. Co., 25 Misc.3d 140(A), 906 N.Y.S.2d 770 (Table), 2009 N.Y. Slip Op. 52446(U), 2009 WL 4639680 (App. Term 2d, 11th & 13th Dists. Dec. 1, 2009).

Consequently, Applicant has not sufficiently rebutted the lack of medical necessity by a preponderance of the credible evidence. Accordingly, Applicant's claim for reimbursement for the MRIs is denied.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot, without merit, and/or waived insofar as not raised at the time of the hearing.

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 Westchester

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

10/20/2025

(Dated)

Gregory Watford

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:
a5c08d1eba9dcd1fb72c1844a9429544

Electronically Signed

Your name: Gregory Watford
Signed on: 10/20/2025