

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Meds And Beyond Inc  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-25-1402-0327

Applicant's File No. NA

Insurer's Claim File No. 0764934634

NAIC No. 29688

### 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 01/09/2026  
Declared closed by the arbitrator on 01/09/2026

Ian Besso, Esq. from The Sigalov Firm PLLC participated virtually for the Applicant

Olga Gromyko, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,947.44**, 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 its charges for the Naproxen/Esomeprazole dispensed on 12/19/24 to the Injured Party (KO), a 42-year-old female passenger involved in a motor vehicle accident on 08/06/24. The respondent denied the claim based on the peer review by Dr. Kevin Curley, MD, dated 02/03/25.

4. Findings, Conclusions, and Basis Therefor

The decision is based on the documents in the Modria ADR Electronic Case folder by the American Arbitration Association (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 its charges for the Naproxen/Esomeprazole dispensed on 12/19/24, in the amended amount of \$2149.62.

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 Lasegues' 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 commenced 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 reevaluated 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 09/26/24, Dr. Henoah, MD., re-evaluated the Injured Party and reported she presented with persisting pain in her right shoulder, back, and right knee. Physical examination revealed moderate tenderness in the right shoulder with motor deficits and restricted ranges of motion, moderate tenderness in the right knee, a positive McMurray's test, Patellar tap test, Patellar grind test, restricted ranges of motion, and

abnormal ambulation favoring the right lower extremity, and moderate to marked tenderness in the lumbar spine with marked spasm and restricted ranges of motion, and a positive Lasegues test. Based on the exam, Dr. Henoch diagnosed a right shoulder sprain, right shoulder tendinitis, right shoulder rotator cuff pathology, a right knee sprain, right knee tendinitis, right knee internal pathology, a lumbar spine sprain, lumbar spasm, and lumbar neuropathies. The Injured Party continued receiving conservative treatment.

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 Lasegues 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.

On 11/24/24, Dr. Henoch, MD, prescribed the disputed Naproxen/Esomeprazole 500-20 mg.

On 12/19/24, the applicant dispensed the disputed pharmaceutical to the Injured Party.

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 peer review by Dr. Kevin Curley, MD, dated 02/03/25.

After receiving 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. 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. 2<sup>nd</sup> 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 lack of medical necessity defense is preserved.

I find 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 peer review by Dr. Kevin Curley, MD, dated 02/03/25. To rebut that defense, the applicant relies on the rebuttal by Dr. Avraham Henoch, MD.

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. See Vladimir Zlatnick, M.D., P.C. v. Travelers Ins. Indemnity Co., 12 Misc.3d 128A (App. Term 1<sup>st</sup>Dept. 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 that 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 rebutted the initial presumption that the disputed Naproxen/Esomeprazole dispensed on 12/19/24 was medically necessary with Dr. Curley's peer review dated 02/03/25 because he arguably demonstrated that the disputed pharmaceutical was dispensed inconsistent with his cited applicable standard of care. The peer reviewer argued that Naproxen Esomeprazole is a proton pump inhibitor and that such a pharmaceutical is prescribed to treat conditions like peptic ulcer disease, gastrointestinal reflux, and Helicobacter pylori infection. He argued that there was no evidence or any signs or symptoms of those conditions and that even if such conditions existed, they were unrelated to the motor vehicle accident.

Additionally, the peer reviewer cited the New York State Mid and Low Back Pain Injury Treatment Guidelines, updated November 01, 2021, that state, "*Proton pump inhibitors may be recommended for patients at high risk for gastrointestinal bleeding. Such conditions would include prior GI bleed, the elderly, diabetics, and cigarette smokers.*" The peer reviewer argued that those criteria also were not met.

I find that the peer reviewer's above arguments set forth a sufficient medical rationale to support his conclusion that the disputed pharmaceutical was medically unnecessary. I also find that his discussion of the history of the accident and treatment, coupled with his review of the cited medical records, demonstrates that his factual basis was sufficient. So, I find the respondent established its prima facie case that the disputed pharmaceutical was medically unnecessary.

Therefore, the issue is whether the applicant refuted the respondent's defense.

In his rebuttal, Dr. Henoach, MD, argued that the conditions cited by the peer reviewer are not the only indications for the prescription of Naproxen/Esomeprazole 500-20 mg tablets. He contended that the Injured Party's persisting musculoskeletal pain required the use of NSAIDs and that common side effects of using NSAIDs are abdominal pain, indigestion, diarrhea, nausea, upset stomach, bloating, and gas. Specifically, he argued, "*I note that the patient was prescribed Naproxen/Esomeprazole 500-20mg tablet to mitigate the risk of gastric ulcers associated with the use of nonsteroidal anti-inflammatory drugs (NSAIDs).*" He also argued that NSAIDs damage the stomach lining. Thus, he argued that physicians include an antacid in the drug regimen to neutralize the stomach acid, which includes **over-the-counter** Omeprazole, Lansoprazole, Rabeprazole, Esomeprazole (Nexium), Dexlansoprazole, and Pantoprazole.

Finally, I find that the applicant failed to rebut the respondent's evidence because the narrative by Dr. Henoach, MD, did not demonstrate that the disputed pharmaceutical was

prescribed consistent with the peer reviewer's cited applicable standard of care. Also, the prescribing physician did not demonstrate that the cited standard of care was incomplete or was not the generally accepted standard of care. Finally, although the prescribing physician persuades me that over-the-counter Esomeprazole (Nexium) was medically necessary, he did not refute the peer reviewer's argument regarding the disputed combination pharmaceutical (Naproxen/Esomeprazole). Consequently, I find in favor of the respondent.

**Accordingly, for the above reasons, I find in favor of the respondent. The applicant's claim is denied 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 claim is DENIED in its entirety

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.

01/09/2026  
(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:**  
6d0fbfc2aab452e91af34dd492779f76

**Electronically Signed**

Your name: Heidi Obiajulu  
Signed on: 01/09/2026