

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Supplies of NY Corp.  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-25-1381-6776

Applicant's File No. RB-1001-479292

Insurer's Claim File No. Q758874036

NAIC No. 19232

### ARBITRATION AWARD

I, Anne Malone, 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

1. Hearing(s) held on 03/20/2026  
Declared closed by the arbitrator on 03/20/2026

Elyse Ulino, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Meghan McDonough, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,493.41**, 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 71 year old EIP reported involvement a motor vehicle accident on June 14, 2024; claimed related injury and received a cervical pillow, cervical collar, shoulder support, two knee orthoses, mattress, bed board and elbow brace provided by the applicant on July 17, 2024 and a custom knee orthosis and LSO provided by the applicant on August 13, 2024.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was denied by the respondent on the grounds that the bills at issue contained material misrepresentations of fact, the services were not performed and the reports and bills do not accurately represent the scope of the

services rendered to the EIP. Specifically she testified that she did not receive some of the DME at issue.

The denial of this claim was also based on a peer review by Michael Tadros, M.D. dated December 5, 2024. In response, the applicant submitted a rebuttal dated January 7, 2026 by Erica David-Park, M.D. who was not one of the EIP's treating medical provider.

The respondent also asserted a fee schedule defense related to one of the knee braces and the bed table billed on July 17, 2024.

**The issues to be determined at the hearing are:**

**Whether the respondent established its defense of a material misrepresentation based on the EUO of the EIP.**

**Whether the respondent established that the durable medical equipment at issue was not medically necessary.**

**Whether the respondent established its fee schedule defense for the bed board and knee orthosis billed on July 17, 2024.**

#### 4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

##### Material Misrepresentation

The EUO of the EIP was conducted on November 13, 2024. The respondent contends that the testimony of the EIP established that the DME at issue was not provided to her and established a material misrepresentation regarding the actual DME that was provided by the applicant.

I have reviewed the EUO testimony and noted that specific testimony regarding the DME provided to the EIP. (pp. 57 ll. 19 to pp. 67 ll. 6.)

I also reviewed delivery receipts signed by the EIP for cervical collar, bed board, cervical pillow, dry pressure mattress, elbow brace, shoulder support, knee orthoses (L and R), lumbar orthosis, rigid adjustable knee orthosis.

Based on the EUO testimony and delivery receipts, I find that the DME at issue was provided to the EIP.

**Therefore, the respondent failed to establish its defense of material misrepresentation.**

Medical Necessity

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." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11<sup>th</sup> and 13<sup>th</sup> 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 1<sup>st</sup> 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.)

To support its contention that the provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Tadros, who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to her. Dr. Tadros considered possible arguments and justification for the need for the DME at issue and determined that it was not warranted under the circumstances presented.

Dr. Tadros discussed each particular item of DME and the general uses and benefits of each one. He also discussed the standard of care and his reasons for determining that each was not medically necessary for this particular EIP.

The peer review includes all of the DME at issue in this claim except for the custom knee orthosis. Although Dr. Tadros mentioned custom knee braces in the peer, he did not list it as one of the items of DME at issue and did not specifically state that it was not medically necessary for this EIP.

Dr. Tadros supported, with relevant medical literature, his opinion that the DME at issue, with the exception of the custom knee orthosis, were not medically necessary for this particular EIP at the time it was provided.

Respondent has factually demonstrated that the DME at issue, with the exception of the custom knee orthosis were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion, pursuant to Bronx Expert Radiology, P.C., *supra*.

Based on the foregoing, the applicant is entitled to reimbursement for the custom knee orthosis billed under code L1832 since it was not included in Dr. Tadros' peer review.

**Therefore, the applicant is awarded \$607.55 for the custom knee orthosis.**

In opposition to the peer review, the applicant presented a rebuttal by Dr. David-Park who reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Tadros and addressed each of his arguments regarding the lack of medical necessity for the specific items of DME prescribed for this particular EIP.

Dr. David-Park supported, with relevant medical literature her opinion that each item of DME was medically necessary for this particular EIP at the time it was provided.

After a review of all of the evidence submitted an issue of fact remains as to whether the DME at issue was medically necessary. Conflicting opinions have been presented in the peer review by Dr. Tadros and the rebuttal by Dr. David-Park on behalf of the applicant.

In this instance, the rebuttal by Dr. David-Park meaningfully refers to and rebuts the findings of Dr. Tadros. In addition, the medical reports submitted are sufficient to establish the medical necessity for the services at issue.

Therefore, I find that the submission of Dr. David-Park was more persuasive in this instance.

Based on the foregoing, I find that the respondent failed to establish that the DME at issue was not medically necessary.

**Therefore, an award will be issued in favor of the applicant pursuant to the appropriate fee schedule.**

#### Fee Schedule

The respondent asserted a fee schedule defense for the bed board which was billed under DME code E0274. A review of the New York Workers'

Compensation DME Fee Schedule confirms that this code is for a "over the bed" table which is correctly billed at \$101.85.

The same fee schedule lists a "bed board" under code E0273. The schedule does not provide an amount for this DME which is listed as "PAR." According to the DME fee schedule this means that Prior Approval is Required.

The applicant argued that the respondent was required to request verification to establish the correct fee schedule amount for the bed board.

However, this is not a question of the invoice amount. It is a requirement that the applicant must receive prior approval for this particular DME.

According to the applicable fee schedule, since the applicant failed to get prior approval, it is not entitled to reimbursement for this DME.

Based on the foregoing, the respondent has established its fee schedule defense for the bed board.

**Therefore, the applicant is awarded \$1,775.86 for the DME provided in addition to \$607.55 for the custom knee orthosis.**

**Accordingly, the applicant is awarded a total of \$2,383.41 in disposition of this claim.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. 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	Status
	Advanced Supplies of NY Corp.	07/17/24 - 07/17/24	\$1,885.86	Awarded: \$1,775.86
	Advanced Supplies of NY Corp.	08/13/24 - 08/13/24	\$607.55	Awarded: \$607.55
<b>Total</b>			<b>\$2,493.41</b>	<b>Awarded: \$2,383.41</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 01/10/2025 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30<sup>th</sup> day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed 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 of \$1,360.00. See 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 CT

SS :

County of Fairfield

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

03/31/2026

(Dated)

Anne Malone

**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:**  
f306982fb072a1032af0fbfeb867120d

**Electronically Signed**

Your name: Anne Malone  
Signed on: 03/31/2026