

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

North Shore University Hospital (NSUH) ,  
North Shore LIJ Medical PC  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No.	17-25-1423-8632
Applicant's File No.	NFMUL25-2885
Insurer's Claim File No.	1104035-01
NAIC No.	16616

### **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 04/13/2026  
Declared closed by the arbitrator on 04/13/2026

Helen Feingersh, Esq. from Horn Wright, LLP participated virtually for the Applicant

Jeffrey Siegel, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$114,763.02**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$29,869.09 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

This claim involves two applicants North Shore University Hospital (NSUH) and North Shore LIJ Medical (NSLIJ.) The 64 year old EIP reported involvement in

a motor vehicle accident on October 7, 2021; claimed related injury and underwent medical services provided by the applicants from May 5, 2023 to August 25, 2023.

The applicant submitted a claim for these medical services.

Payment of the bills for services rendered on May 5, 2023 by NSUH for \$616.61(pre-op testing -right hip) and NSLIJ for \$133.84 (radiology right lower extremity) and radiology of the pelvis provided on May 18, 2023 (\$25.31) and the right hip surgery performed by Dr. Dicipinigaitis on May 18, 2023 and related hospital treatment provided from May 18, 2023 to May 22, 2023 (NSUH - (\$113,192.98 amended to \$28,299.05) was denied based on peer reviews by Stuart Springer, M.D. and Howard Levy, M.D. dated September 11, 2023.

Payment of bills for services rendered by NSUH for miscellaneous pre-operative testing provided on August 4, 2023 (\$626.69 - left hip); NSLIJ for computer tomography (left hip(\$133.84) and x-ray of the pelvis provided on August 25, 2023 (\$33.75) was delayed pending responses to outstanding verification requests.

The parties agreed that the PIP benefits on the policy at issue have been exhausted and that APIP may be available from the insurer who provided coverage for the other vehicle involved in the subject accident.

The submissions include evidence that a New York Motor Vehicle No-Fault Insurance Law Additional PIP Subrogation Agreement (NF-11) has been received by the respondent.

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

**Whether the respondent established that the right hip surgery and related services and services were not causally related to the subject accident.**

**Whether the respondent established that the claim for services rendered on August 4, 2023, and August 25, 2023 was premature.**

#### 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.

#### Peer Reviews

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.)

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.)

#### Right hip surgery, hospital services and other related treatment

To support its contention that services rendered on May 5, 2023 by NSUH for \$616.61 (pre-op testing -right hip); NSLIJ for \$133.84 (radiology right lower extremity) ; radiology of the pelvis provided on May 18, 2023 (\$25.31) and the right hip surgery performed by Dr. Dicpinigaitis on May 18, 2023 and related hospital treatment provided from May 18, 2023 to May 22, 2023 (NSUH - (\$113,192.98 amended to \$28,299.05) was not causally related to the subject accident, the respondent relied upon peer reviews by Stuart Springer, M.D. and Howard Levy, M.D. dated September 11, 2023.

Both Dr. Springer and Dr. Levy submitted comprehensive reports in which they discussed the medical services provided by NSUH and NSLIJ and their reasons for determining that they were not causally related to the subject accident.

Drs. Springer and Levy reviewed the medical records submitted and determined that there was no documented evidence that the EIP had right hip pain, no documented imaging or diagnostic tests, or records to indicate that he received conservative care for the right hip for more than a year and a half from 10/7/2021 to 4/27/2023.

Based on the medical records submitted Drs. Springer and Levy determined that there was no evidence to support a causal relationship between the EIP's right hip complaints and the subject accident.

Therefore, they concluded that the right hip surgery and related hospital treatment, preoperative testing and x-ray of the pelvis and computed tomography provided to the EIP from May 5, 2023 to May 22, 2023 were not causally related to the subject accident.

Respondent has met its evidentiary burden. The peer reviews adequately set forth the factual basis and medical rationale to support the conclusion that the right hip

surgery and related medical services at issue were not causally related to the subject accident. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish a causal relationship between the services at issue and the subject accident.

The applicant did not submit a formal rebuttal. However, the applicant relied upon the letter of medical necessity by Dr. Dicipinigatis dated September 6, 2023 to support its contention that the right total hip arthroplasty surgery and related medical services were medically necessary and related to the subject accident.

Dr. Dicipinigatis stated that the EIP was first seen on April 27, 2023 (a year and a half after the date of the subject accident) with complaints of right hip pain and stiffness. The findings of his physical examination of the EIP were consistent with right hip arthritis with decreased range of motion and ambulation with an antalgic gait. X-rays at that time and CT scans performed on May 5, 2023 supported this diagnosis.

Based on these findings, Dr. Dicipinigatis determined that no other treatment options were available except right total hip arthroplasty surgery. The surgery was performed on May 18, 2023.

This letter of medical necessity and the medical records submitted were not sufficient to refute the findings of Drs. Springer and Levy. Since the applicant did not provide any specific rebuttal to the peer review, it did not respond to the respondent's argument that the medical services provided to the EIP for the right hip injury were not causally related to the subject accident. The medical records alone are not sufficient to rebut the conclusions of Dr. Springer and Dr. Levy.

A review of the applicant's submissions reveals that it has failed to meet the burden of persuasion in rebuttal. The letter of medical necessity and medical records submitted in opposition to the findings of Drs. Springer and Levy are insufficient to overcome the burden of production established by respondent.

Based on the foregoing, I find that the respondent has established that the services related to treatment of the right hip injury were not medically causally related to the subject accident.

**Therefore, the claim for services rendered on May 5, 2023 by NSUH for \$616.61(pre-op testing -right hip); NSLIJ for \$133.84 (radiology right lower extremity) ; radiology of the pelvis provided on May 18, 2023 (\$25.31) and the right hip surgery performed by Dr. Dicipinigaitis on May 18, 2023 and related hospital treatment provided from May 18, 2023 to May 22, 2023 (NSUH - (\$113,192.98 amended to \$28,299.05) is dismissed with prejudice.**

Outstanding Verification

The applicant billed for medical services related to the EIP's left hip injury, including left hip pre-op testing, radiology and tomography which were provided on August 4, 2023 and August 25, 2023 in the total amount of \$794.28, payment of which was denied pending responses to outstanding verification requests.

If an insurer requires any additional information to evaluate the proof of claim, such request for verification must be made within 15 business days of the receipt of the bill in order to toll the 30 day period to pay or deny the claim. See 11 NYCRR 65-3.5(b); See also New York Hosp. Med. Ctr. of Queens v. Allstate Ins. Co., 2014 NY Slip Op 00640 (2d Dept. 2014.)

Where there is a timely original request for verification, but no response to the original request for verification is received within 30 days, or the response to the verification request is incomplete, then the insurer, within 10 calendar days after the expiration of that 30 day period, must follow up with a second request for verification. Id.

If there is no response to the second or follow up request for verification, the time in which the insurer must decide whether to pay or deny the claim is indefinitely tolled. Id.

Therefore, when a no-fault medical service provider fails to respond to the requests for verification the claim is premature and should be denied without prejudice.

In the instant matter, the respondent sent timely verification requests for MRI films and reports, CT scans, x-rays and intraoperative photos regarding left knee surgery provided by NSUH (\$626.69 date of service August 4, 2023) and NSLIJ (\$133.84 date of service August 4, 2023 and \$33.75 date of service August 25, 2023) to which the applicant did not respond.

In addition, in Island Life Chiropractic, PC v Travelers Ins.Co., 64 Misc. 3d 143(A), 117 N.Y.S.3d 428 (App Term 2d Dept. 2019) the court held that "Where a no-fault insurer is relying on the defense that an action is premature because verification is outstanding, it is the defendant insurer's prima facie burden at trial to demonstrate (1) that verification requests were timely mailed and that the defendant did not receive the requested verification." (See 11 NYCRR 65-3.8[a]; Right Aid Medical Supply Corp. v State Farm Mut. Auto Ins. Co., 58 Misc. 3d 140(A), 94 N.Y.S.3d 540 NY Slip OP 51875[U] (App Term 2d Dept, 2d, 11<sup>th</sup> & 13<sup>th</sup> Jud Dists (2017.)

In the instant matter, the respondent submitted proof of mailing of the verification requests and did not submit evidence from someone with personal knowledge that a response was not received from the applicant.

Under these circumstances, the respondent has established that the claim is premature and therefore, the time to pay or deny this bill at issue is not tolled.

**Therefore, the claim for \$794.28 is dismissed without prejudice.**

**Accordingly, the claim for medical services rendered by NSUH and NSLIJ for dates of service May 5, 2023 to May 18, 2023 is dismissed with prejudice and medical services provided on August 4, 2023 and August 25, 2023 are dismissed without prejudice.**

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.

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Medical		From/To	Claim Amount	Amount Amended	Status
	North Shore University Hospital (NSUH)	05/05/23 - 05/05/23	\$616.61		Denied
	North Shore University Hospital (NSUH)	05/18/23 - 05/18/23	\$113,192.98	\$29,869.09	Denied
	North Shore University Hospital (NSUH)	08/04/23 - 08/04/23	\$626.69		Dismissed without prejudice
	North Shore LIJ Medical PC	05/05/23 - 05/05/23	\$133.84		Denied
	North Shore LIJ Medical PC	05/18/23 - 05/18/23	\$25.31		Denied
	North Shore LIJ Medical PC	08/04/23 - 08/04/23	\$133.84		Dismissed without prejudice
	North Shore LIJ Medical PC	08/25/23 - 08/25/23	\$33.75		Dismissed without prejudice
<b>Total</b>			<b>\$114,763.02</b>		<b>Awarded: \$0.00</b>

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.

04/30/2026  
(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:**  
70998388bf52d8f3d8105e0f60e1ed71

**Electronically Signed**

Your name: Anne Malone  
Signed on: 04/30/2026