American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Williston Park Pharmacy Corp. (Applicant)	AAA Case No.	17-25-1419-3805
	Applicant's File No.	CF13036571
- and -	Insurer's Claim File No.	25-759008921
	NAIC No.	10192
Progressive Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Eileen Hennessy, 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-T.M.M.

1. Hearing(s) held on 04/14/2026
   Declared closed by the arbitrator on 04/14/2026

   Tinamarie Franzoni from Choudhry & Franzoni, PLLC participated virtually for the Applicant

   Grace Halligan from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$5,012.61**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant amended the amount in dispute from the original amount of $5,012.61 to $3,640.29 in accordance with Respondent's fee audit.

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

3. Summary of Issues in Dispute

   The record reveals that the Assignor-T.M.M., a 27-year-old female, claimed injuries as a driver of a motor vehicle involved in an accident that occurred on 6/22/2025. Applicant billed for Diclofenac Solution 2% and Lidocaine ointment 5% provided on 7/10/2025. Respondent denied the bill based upon lack of medical necessity as determined by the

peer review report of Ajendra Sohal, M.D., dated 8/22/2025. The issue to be determined is whether the medication was medically necessary?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for Diclofenac Solution 2% and Lidocaine ointment 5%. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing held via Zoom.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

Legal Standards for Determining Medical Necessity

Once applicant has established a prima facie case, the burden then shifts to respondent to establish a lack of medical necessity with respect to the benefits sought. *See*, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc3d 1025A (2005). A denial premised on lack of medical necessity must be supported by competent evidence such as an IME, peer review or other proof which sets forth a factual basis and medical rational for denying the claim. *See*, Healing Hands Chiropractic, P.C. v. Nationwide Assur. Co., 5 Misc3d 975 (2004).

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, Kingsbrook Jewish Medical Center v. Allstate Ins. Co., 61 A.D.3d 13, 871 N.Y.S.2d 680 (2d Dept. 2009), such as by a qualified expert performing an independent medical examination or conducting a peer review of the injured person's treatment. *See* Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp., 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

To support a lack of medical necessity defense, respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." *See* Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th 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 generally*, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

The appellate courts have not clearly defined what satisfies the insurer's evidentiary standard except to the extent that "bald assertions" are insufficient. Amherst Medical

Supply, LLC v. A Central Ins. Co., 41 Misc.3d 133(A), 981 N.Y.S.2d 633 (Table), 2013 NY Slip Op 51800(U), 2013 WL 5861523 (App. Term 1st Dept. Oct. 30, 2013). However, there are myriad civil court decisions tackling the issue of what constitutes a "factual basis and medical rationale" sufficient to establish a lack of medical necessity. The trial 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 generally* Nir v. Allstate Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); *See also*, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

Where a respondent meets its burden, it becomes incumbent on the claimant to rebut the peer review. Be Well Medical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 18 Misc.3d 139(A), 2008 WL 506180 (App. Term 2d & 11 Dists. Feb. 21, 2008); A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., 16 Misc.3d 131(A), 2007 WL 1989432 (App. Term 2d & 11 Dists July 3, 2007. "[T]he insured/provider bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb." Bedford Park Medical Practice, P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 2005 WL 1936346 at 3 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). "Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity (*see* Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11 ed])." West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip. Op. 5187(U) at 2, 2006 WL 2829826 (App. Term 2d & 11 Dists. Sept. 29, 2006).

Application of Legal Standards

In support of its contention that the medication provided on 7/10/2025, including the Diclofenac Solution 2% and Lidocaine ointment 5%, were not medically necessary, Respondent relies upon the peer review of Ajendra Sohal, M.D., dated 8/22/2025. A formal rebuttal was not submitted.

After reviewing applicable records and providing a history of the Assignor's condition and treatment, Dr. Sohal concluded that the prescribed Cyclobenzaprine tablets were medically necessary, which were paid and withdrawn from dispute.

After reviewing applicable records and providing a history of the Assignor's condition and treatment, Dr. Sohal concluded that the prescribed Lidocaine ointment 5% and Diclofenac Solution 2% were not medically necessary, which was supported by medical literature. Specifically, Dr. Sohal noted in pertinent part, "Lidocaine 5% ointment was prescribed. Compound creams are not necessary. Topical ointment is not necessary. It does not penetrate into deeper structures and for systemic blood levels. It is not going to

be efficacious for joints and large muscle groups. It is not useful for nociceptive pain. There is no area of small neuropathic pain. It is also used for various mucosal surface such as urethra and vagina or oral cavity. There is no such indication. Use of lidocaine ointment and most of the compound cream was not needed. Compound formulations have questionable utility and even FDA has raised issue regarding the utility of the topical compound formulation and their quality" and "Diclofenac Sodium 2% solution is not medically necessary. It is generally approved for knee osteoarthritis, but there is no causally related knee pathology for this particular claimant. According to PDR, it's used for treatment of signs and symptoms of osteoarthritis of the knee(s). It is applied to clean, dry skin. It is not evaluated for use on spine, hip, or shoulder". (Citations omitted.) Reference is made to Dr. Sohal's peer. Respondent has met its evidentiary burden. The peer review authored by Ajendra Sohal, M.D., dated 7/10/2025, adequately set forth the factual basis and medical rationale to support the conclusion that the prescribed medication was not medically necessary. That being so, the burden shifts to the Applicant to counter Respondent's showing.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op. 50456U, 18 Misc.3d 1147A, 2008; West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131, 824 N.Y.S.2d 759 (App. Term 2 Dept. 2006).

In this case, Applicant has not submitted a formal rebuttal. The failure to submit one is not an automatic bar to recovery. There may be instances when the information contained within the medical reports meaningfully addresses the points that are raised in the peer review. However, when the evidence does not speak to the issues that are voiced by the peer reviewer, the question of medical necessity will preponderate in the insurer's favor. Here, after comparing the relevant evidence presented by both parties as against each other, I find for the Respondent. After careful review of the record, I find Respondent has set forth a factual basis and medical rationale for denying payment. The evidence, including the examination by John McGee, M.D., dated 7/2/2025, and the prescriptions, dated 7/8/2025, do not suffice to rebut Dr. Sohal's determination. Applicant has failed to establish that the Lidocaine ointment 5% and Diclofenac Solution 2% in dispute were medically necessary Having carefully considered the evidence, I find that Applicant has failed to prove its case. Applicant's claim for Lidocaine ointment 5% and Diclofenac Solution 2% is denied.

CONCLUSION

Accordingly, Applicant's amended claim is denied. 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 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 Nassau

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

05/14/2026
(Dated)

Eileen Hennessy

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:
0d3de83ac144f9f572b6e45705fbd6d4

Electronically Signed

Your name: Eileen Hennessy
Signed on: 05/14/2026