

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

The Center for Musculoskeletal Disorders
(Applicant)

- and -

Starr Indemnity & Liability Co
(Respondent)

AAA Case No.	17-25-1408-6478
Applicant's File No.	00152323
Insurer's Claim File No.	4A2409B2GPJ0001
NAIC No.	22608

ARBITRATION AWARD

I, Kihyun Kim, 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: the Assignor

1. Hearing(s) held on 05/08/2026
Declared closed by the arbitrator on 05/08/2026

Sasha Hochman, Esq. from Drachman Katz, LLP participated virtually for the Applicant

Darrell Thompson, Esq. from Russo & Gould, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$111,131.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to \$608.57 to reduce Applicant's charges to an amount asserted to be consistent with the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to Applicant's prima facie case and to Respondent's timely denial.

3. Summary of Issues in Dispute

The issue presented is whether Applicant's services were medically necessary.

The Assignor (VT) was a 52-year-old female who was the driver of an automobile that was involved in an accident on September 9, 2024. Applicant seeks reimbursement in the aggregate amount of \$608.57 for a multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure provided to the Assignor on November 6, 2024. Reimbursement was denied based on the peer review by Michael Tawfelllos, M.D., dated December 23, 2024.

4. Findings, Conclusions, and Basis Therefor

This arbitration was conducted using the documentary submissions of the parties contained in the ADR Center, maintained by the American Arbitration Association. I have reviewed the documents contained therein as of the closing of the hearing, and such documents are hereby incorporated into the record of this hearing. The hearing was held by Zoom video conference. Both parties appeared at the hearing by counsel, who presented oral argument and relied upon their documentary submissions. There were no witnesses.

At the hearing, Respondent acknowledge receipt of the bill in question and the parties stipulated to Applicant's prima facie case and to Respondent's timely denial. Respondent presented no evidence regarding Applicant's charges and the fee schedule at the hearing.

The Assignor was a 52-year-old female who was injured in an automobile accident on September 9, 2024. Following the accident, the Assignor apparently did not go to the hospital. The Assignor later sought treatment for her injuries from various providers, including Applicant.

On November 6, 2024, the Assignor underwent a multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure conducted by Jonathan Simhae, M.D., at a facility in Bergenfield, New Jersey. Applicant thereafter billed Respondent for its services, and Respondent denied Applicant's claims based on the December 23, 2024 peer review by Michael Tawfelllos, M.D., who found the procedure and associated services to be medically unnecessary.

Applicant now seeks reimbursement in the aggregate amount of \$608.57 for the multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure provided to the Assignor on November 6, 2024.

Legal Framework - Medical Necessity

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 [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 W. Ins. Co.*, 42 Misc 3d 141(A), 2014 NY Slip Op 50219(U) (App. Term 2d, 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.*, 13 Misc 3d 136(A), 2006 NY Slip Op 52116 (App Term 1st Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. *Amherst Med. Supply, LLC v. A. Cent. Ins. Co.*, 41 Misc 3d 133(A), 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 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 civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. 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 (Civ. Ct. Kings Co. 2005). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *Id.*, at 547 (*citing City Wide Social Work & Psychological Servs. v. Travelers Indem. Co.*, 3 Misc. 3d 608, 612 [Civ. Ct., Kings County 2004]).

To meet the burden of persuasion regarding medical necessity - in the absence of factually contradictory records - the applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. *See generally, Pan Chiropractic, P.C. v Mercury Ins. Co.*, 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] (App Term, 2d, 11th & 13th Jud Dists 2009).

Peer Review - Michael Tawfellos, M.D., dated December 23, 2024

Respondent relies upon the peer review report of Michael Tawfellos, M.D., dated December 23, 2024, in asserting lack of medical necessity for the multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure provided to the Assignor on November 6, 2024. At the outset, the peer report lists the various medical records which Dr. Tawfellos reviewed and provides a brief medical history of the accident and the treatment that the Assignor received. Dr. Tawfellos opined based on the cited guidelines and available medical records that the lumbar medial branch block injections and associated fluoroscopic guidance were not medically necessary.

Dr. Tawfellos initially asserted that:

The standard of care for spine injuries would begin with a reasonable trial of conservative treatment (exercises, physical methods, NSAIDs, and muscle

relaxants). If the patient is unresponsive to conservative treatment and has clinical evidence of progressive physiologic complaints, injections should be performed. In addition, all paravertebral facet joint/nerve block injections require that these procedures be performed under fluoroscopic- or CT-guided imaging

Dr. Tawfellos cited medical authority that stated that facet injection/medial branch nerve block injection of the cervical or lumbar spine may be indicated when all of the following criteria are met:

Moderate-to-severe pain with functional impairment of at least 3 months duration.

Predominant axial pain that is not attributable to radiculopathy (with the exception of synovial cysts), myelopathy, or neurogenic claudication.

Physical exam findings which are consistent with the facet joint as the presumed source of pain.

Absence of non-facet pathology that could explain the source of the patient's pain, such as fracture, tumor, or infection.

Absence of prior surgical fusion at the proposed level.

Lack of improvement or resolution after completing at least 6 weeks of conservative management for the current condition or episode of pain.

Dr. Tawfellos found that in this case, the Assignor was involved in a motor vehicle accident on September 9, 2024 and sustained an injury to the lower back. He noted that the Assignor underwent lumbar spine medial branch block injections on November 6, 2024. He asserted that as per the cited article, facet injection/medial branch nerve block injection of the cervical or lumbar spine "may be indicated when there is a lack of improvement or resolution after completing at least 6 weeks of conservative management." He contended, however, that as per the available medical records, the Assignor did not receive any non-invasive conservative treatment for the lumbar spine before proceeding to the injection. He also found no contraindication of non-invasive conservative care. Dr. Tawfellos maintained that the Assignor should have been initially treated with adequate conservative care in the form of physical therapy, chiropractic treatment, acupuncture treatment, activity modifications, and a home exercise program before proceeding to the injection.

Rebuttal - Jonathan Simhaee, M.D., dated February 23, 2025

To refute the December 23, 2024 peer review report by Dr. Tawfellos, Applicant relies principally upon a rebuttal affirmation, dated February 23, 2025, from Jonathan Simhaee, MD. Dr. Simhaee respectfully disagreed with the peer reviewer's assessment and conclusions and opined that the November 6, 2024 lumbar medial branch block injections and all associated services were entirely justified and medically necessary.

Initially, Dr. Simhaee asserted that the peer reviewer did not provide any literature that stated that conservative treatments must be contraindicated prior to proceeding with

medial branch block injections. In any event, Dr. Simhaee maintained that the Assignor was suffering from continued lower back pain and had indeed pursued conservative management.

Dr. Simhaee asserted that as per the September 19, 2024 office visit, reportedly reviewed by Dr. Tawfellos, as well as the October 23, 2024 office visit, which Dr. Tawfellos failed to review, the Assignor underwent an extensive course of conservative care treatments including physical therapy, the use of durable medical equipment and medications. Dr. Simhaee presented the findings from the October 23, 2024 office evaluation, and contended that it was determined that the November 6, 2024 injections were medically necessary to address the patient's lower back pain and symptomatology which had not responded to conservative treatments. He noted that the October 23, 2024 evaluation report specifically noted that the "Patient has failed more than 6 weeks of conservative treatment with physical therapy, HEP, medication (including NSAIDs and muscle relaxants) and activity modifications."

Dr. Simhaee further asserted that in this case, the facet injections were provided as a diagnostic tool for identifying what was causing the back pain that the patient was experiencing. He explained that when the application of local anesthetic and long-lasting steroids results in diminished pain emanating from the facet joints, it confirms the facet joint as the source of the pain, allowing for additional targeted therapies and additional long-term pain management, if necessary. He asserted that the clinical findings, including tenderness of the facet joints and a positive Facet Loading test, all indicated facet syndrome as a pain generator, and therefore, diagnostic facet injections were performed to further confirm facet syndrome as the pain generator and thereby direct the patient's further course of treatment. Citing certain guidelines, Dr. Simhaee asserted that "Diagnostic facet joint injection and/or facet nerve block (e.g., medial branch block) is proven and medically necessary to localize the source of pain to the facet joint in persons with spinal pain." He maintained that according to the quoted literature the proper method to diagnose pain as being facet oriented is through physical examination which produces suspicion of facet syndrome followed by a confirming injection, as was done in this case.

Finally, Dr. Tawfellos noted the Assignor's positive response to the November 6, 2024 procedures, where the Assignor's VAS decreased from a severe 8/10 to a mere 3/10 following the lumbar MBB and TPIs on November 6, 2024. He contended that the positive response to the medial branch nerve block injections and TPIs confirmed the diagnoses of facet syndrome and myofascial pain as the pain generators and the medical necessity of the provided injections to provide pain relief.

Dr. Tawfellos maintained that the Assignor had a combination of complaints and clinical findings which demonstrated the need for the procedures. He asserted that the treating physician, who is responsible for the care and treatment of the patient, was in the best position to determine the need for treatment.

Analysis - Medical Necessity - LMBB - DOS 11/6/24

After reviewing all of the submissions and taking into account the oral arguments of the parties, I find that Applicant failed to establish, by a preponderance of credible evidence,

that the multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure provided to the Assignor on November 6, 2024, was medically necessary. Overall, I find that Applicant's rebuttal and supporting medical records failed to adequately address and rebut the assertions and opinions advanced in the peer review and to sufficiently demonstrate the medical necessity of the services at issue. The lumbar medial branch nerve block procedure was recommended following pain management re-examination of the Assignor on October 23, 2024, just over six weeks after the accident, and was conducted two weeks later on November 6, 2024. The peer reviewer asserted that the standard of care for spine injuries would begin with a reasonable trial of conservative treatment (exercises, physical methods, NSAIDs, and muscle relaxants), and if the patient is unresponsive to conservative treatment and has clinical evidence of progressive physiologic complaints, injections should be performed. Citing medical authority, the peer reviewer stated that facet injection/medial branch nerve block injection of the cervical or lumbar spine may be indicated when various criteria are met, including, but not limited to, moderate-to-severe pain with functional impairment of at least 3 months duration, and lack of improvement or resolution after completing at least 6 weeks of conservative management for the current condition or episode of pain. The peer reviewer contended that as per the available medical records, the Assignor did not receive any non-invasive conservative treatment for the lumbar spine before proceeding to the injection. He also found no contraindication of non-invasive conservative care. Dr. Tawfellos maintained that the Assignor should have been initially treated with adequate conservative care in the form of physical therapy, chiropractic treatment, acupuncture treatment, activity modifications, and a home exercise program before proceeding to the injection. While Dr. Simhae asserted in the rebuttal that the Assignor underwent an extensive course of conservative care treatments and failed more than six weeks of conservative treatment, the record does not include any medical records that actually document any physical therapy, chiropractic treatment, or acupuncture treatment, and I note that the September 19, 2024 and October 23, 2024 examination reports specifically state, contrary to the assertions of Dr. Simhae, that the Assignor was not undergoing any physical therapy (apparently due to authorization issues). There is also no indication that the Assignor was given or attempted any prescribed activity modifications and/or home exercise program. While Dr. Tawfellos asserted that the findings on examination supported the need for the injections, I am not persuaded that there was any significant findings that warranted the immediate need for the injections without allowing for a reasonable course of conservative care. Ultimately, I find peer review to be more credible and persuasive than the rebuttal and Applicant's supporting medical records and arguments in this case. Based on the totality of the evidence in the record, Applicant has failed to rebut Respondent's defense and establish the medical necessity of the services at issue. As Applicant has failed to meet its burden of persuasion, Applicant's claims for reimbursement for the multi-level lumbar medial branch nerve block with fluoroscopic guidance procedure provided to the Assignor on November 6, 2024, are denied.

Conclusion

For the reasons set forth herein, Applicant's claims are denied in their entirety. 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 and/or waived insofar as not specifically 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 Suffolk

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

06/07/2026
(Dated)

Kihyun Kim

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:
7d681848f400c54cb6750466f19bf40

Electronically Signed

Your name: Kihyun Kim
Signed on: 06/07/2026