

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Simply DME LLC
(Applicant)

- and -

Accident Fund Insurance Company of
America
(Respondent)

AAA Case No. 17-25-1417-9400
Applicant's File No. M25-805676 ,
Insurer's Claim File No. VGM-BG-02965
NAIC No. 10166

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 05/27/2026
Declared closed by the arbitrator on 05/27/2026

Candace Kronholm, Esq. from Shapiro & Associates, P.C. participated virtually for the Applicant

Kimberly Glock, Esq. from Law Office of Jason Tenenbaum, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,700.00**, 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 40 year old EIP reported involvement a motor vehicle accident on May 9, 2025; claimed related injury and received a low intensity ultrasound device provided by the applicant on July 7, 2025.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was denied by the respondent based upon a peer review by Howard Kiernan, M.D. dated August 7, 2025. In response, the applicant submitted a rebuttal dated May 27, 2026 by Kenneth Shaprio, M.D. who was not one of the EIP's treating medical providers.

The issue to be determined at the hearing is whether the respondent established that the durable medical equipment at issue was not medically necessary.

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.

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, 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 Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st 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 DME provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Kiernan, who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to him. Dr. Kiernan 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. Kiernan specifically discussed the low intensity ultrasound device and stated that it was not needed to supplement the conservative program he was

undergoing which included physical therapy. He called it "redundant and excessive" and also determined that it should not be provided for home use without supervision of a physical therapist.

Dr. Kiernan supported, with relevant medical literature, his opinion that the DME at issue was not medically necessary or appropriate for home use for this particular EIP.

Respondent has factually demonstrated that the services at issue 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.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Shapiro, who reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Kiernan and discussed in detail the injuries sustained by the EIP and the treatment rendered to him.

Dr. Shapiro discussed the general uses and benefits of this low intensity ultrasound device and emphasized its use for post-operative recovery. He determined that this DME was required as a result of the patient's injuries and was medically necessary, without specifically indicating why it was necessary for this particular EIP.

Dr. Shapiro supported with relevant medical literature his opinion that the DME at issue was medically necessary.

After a review of all of the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented in the peer review by Dr. Kiernan and the rebuttal by Dr. Shapiro on behalf of the applicant.

In this instance, Dr. Shapiro did not submit a rebuttal which meaningfully refers to and rebuts the findings of Dr. Kiernan. In addition, the medical reports submitted do not contradict his assertions.

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

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

Accordingly, the claim is dismissed with 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 claim is DENIED in its entirety

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.

06/15/2026
(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:
ea0e043e083d5d36a9da692880cd7b62

Electronically Signed

Your name: Anne Malone
Signed on: 06/15/2026