American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

East Flushing Medical PLLC (Applicant)	AAA Case No.	17-25-1392-9148
	Applicant's File No.	BT25-303676
- and -	Insurer's Claim File No.	0579794480001
	NAIC No.	36447
LM Insurance Corporation (Respondent)		

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 12/05/2025, 05/27/2026
   Declared closed by the arbitrator on 05/27/2026

   James DiCarlo, Esq. from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   Theo Gamble from LM Insurance Corporation participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$6,694.06**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended by the applicant to $4,487.99 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

   The 34 year old EIP reported involvement in a motor vehicle accident on October 2, 2024; claimed related injury and an office visit on January 22, 2025 and right shoulder arthroscopy provided by the applicant on February 19, 2025.

   This claim was remanded for

The applicant submitted a claim for the office visit provided on January 22, 2025 based on the IME of the EIP which was performed on December 30, 2024. The IME cut-off was effective on January 10, 2025. In response the applicant submitted a rebuttal by Alexandra Carrer, M.D. dated October 31, 2025, which included the IME by Dr. Hershon.

The claim for the surgeon and PA services, was timely denied by the respondent based on the peer review by Robert Christofaro, M.D. dated February 28, 2025. In response, the applicant submitted a rebuttal of the peer review by Alexandra Carrer, M.D.

The issues to be determined at the hearing are:

Whether the respondent established that the office visit provided on January 22, 2025 was not medically necessary.

Whether the respondent established that the right shoulder arthroscopy provided by the applicant 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 in 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 respondent must "set forth a factual basis and medical rationale for the IME doctor'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 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/her findings; and 3) the peer review report fails to provide 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.)

Office visit - January 22, 2025

To support its contention that the office visit provided to the EIP on January 22, 2025 was not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Hershon, M.D., which was objectively negative and unremarkable. Range of motion was determined with the assistance of a goniometer. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Hershon performed a complete and comprehensive examination of the EIP which did not identify any objective positive findings and determined that his injuries were resolved.

Based upon the physical examination and more than 50 medical records reviewed, Dr. Hershon noted that the EIP reported that he was working as a repair technician at the time of the accident, that he missed five days from work and was working full time, full duty at the time of the IME. Dr. Hershon determined that despite his subjective complaints, there was no evidence of an orthopedic disability to the cervical and thoracic spine and bilateral shoulders, and that he could perform his activities of daily living and working without restrictions. It was Dr. Hershon's opinion that there was no medical necessity for further orthopedic treatment, physical therapy, massage therapy, shockwave therapy, surgery, injections, prescription medication, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the office visit at issue was not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1 Dept. 2006.)

In response, to the report of the physical examination of the EIP by Dr. Hershon, the applicant relied on the rebuttal by Dr. Carrer and submissions, including a December 3, 2024 evaluation and the January 22, 2025 evaluation which documented positive Neer and Hawkins tests which indicated unresolved sprain/strain with continued complaints of pain.

Based on the foregoing, I find that the respondent did not establish that the office visit and provided by Dr. Carrer was not medically necessary.

Accordingly, the applicant is awarded $70.24 in disposition of the claim for services rendered on January 22, 2025.

Peer Review - Right Shoulder Arthroscopy

In support of its contention that the right shoulder arthroscopy and related anesthesia services provided by the applicant were not medically necessary,

respondent relied upon the report of the peer review by Dr. Cristofaro who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him.

Dr. Cristofaro considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented. He specifically noted that the EIP had received physical therapy from October 3, 2024 to October 29, 2024.

MRI studies of the right shoulder were performed on October 17, 2024 which documented a partial thickness tear of the supraspinatus and infraspinatus tendons. The submissions included examinations on December 13, 2024, January 22, 2025 and February 19, 2025.

The right shoulder arthroscopic surgery at issue was performed on February 19, 2025. It was Dr. Cristofaro's opinion that the 7 sessions of physical therapy for the right shoulder were inadequate to determine the effectiveness of conservative treatment.

He acknowledged the positive findings on the MRI studies which he determined could have been effectively managed with an adequate course of conservative treatment including physical therapy and medication. He supported, with relevant medical literature, his opinion that the treatment rendered to the EIP did not meet the standard of care for the injuries he sustained as a result of the subject accident.

The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the medical services at issue were not indicated for this EIP at the time they were provided.

Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish that the medical services at issue were medically necessary.

The applicant submitted a rebuttal by Dr. Carrer, which questioned Dr. Cristofaro's suggested standard of care and treatment course. She evaluated the EIP on January 22, 2025 and documented positive Neer and Hawkins tests. She determined that this finding called into question Dr. Hershon's IME findings. It was Dr. Carrer's opinion that even if the EIP had full range of motion, he could have an injury with positive provocative signs.

Dr. Carrer discussed the difference between Dr. Cristofaro's suggested standard of care and the conflicting standards of care for rotator cuff injuries and determined that clinicians should use their best judgement for surgical intervention. She discussed her general objections to the findings of Dr. Cristofaro articulated in the peer review.

Dr. Carrer argued that the EIP's clinical exams, which were positive for decreased range of motion and weakness, indicated a possible rotator cuff. She cited medical literature to support his determination that the left shoulder arthroscopy was medically necessary.

At a prior hearing held on November 7, 2025 (AAA case no. 17-25-1398-8582) related to the anesthesia services for the surgery at issue, I found in favor of the respondent based on the same peer review and rebuttal as those submitted for this claim.

Res judicata and collateral estoppel are applicable to no-fault arbitration awards and bar relitigation of the same claim or issue. A.B. Medical Services PLLC v New York Central Mutual Fire Ins. Co., 12 Misc.3d 500, 820 N.Y.S.2d 422 (Civ. Ct. Kings Co. 2006), citing Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982.)

A determination of the *res judicata* effect of a prior arbitration proceeding is for the arbitrator in a subsequent arbitration proceeding. City School Dist. Of City of Tonawanda v. Tonawanda Educ. Ass'n., 63 N.Y.S.2d 846, 482 N.Y.S.2d 258 (1984.)

Although the prior award is not *res judicata* since it involves a different applicant, I find that there is no new or different evidence in the record in the case in issue which would lead to a contrary finding and conclusion.

Based on the foregoing, the respondent has established that the right shoulder arthroscopy was not medically necessary.

Therefore, the claim for date of service February 19, 2025 is dismissed with prejudice.

Accordingly, the applicant is awarded $70.24 and the remainder of 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	East Flushing Medical PLLC	**01/22/25 - 01/22/25**	**$70.24**	**$70.24**	**Awarded: $70.24**
	East Flushing Medical PLLC	**02/19/25 - 02/19/25**	**$5,983.58**		**Denied**
	East Flushing Medical PLLC	**02/19/25 - 02/19/25**	**$640.24**		**Denied**
Total			**$6,694.06**		**Awarded: $70.24**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/25/2025 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 30th 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.

06/25/2026
(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:
126db7b89ae616625468b2b6e82f6e4d

Electronically Signed

Your name: Anne Malone
Signed on: 06/25/2026