American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SMK Pharmacy Corp d/b/a Nature's First LTC & Compounding (Applicant)	AAA Case No.	17-25-1412-7052
	Applicant's File No.	n/a
	Insurer's Claim File No.	2-242691-N01
- and -	NAIC No.	36030
Maya Assurance Company (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 06/15/2026
   Declared closed by the arbitrator on 06/15/2026

   Marc Schwartz, Esq. from Marc L. Schwartz P.C. participated virtually for the Applicant

   Arthur De Martini, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$339.17**, 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 42 year old EIP reported involvement in a motor vehicle accident on March 26, 2024; claimed related injury and received Lidocaine Patch, Naproxen and Cyclobenzaprine topical and oral prescription medication provided by the applicant on June 20, 2025.

   The applicant submitted a claim for this prescription medication, payment of which was timely denied by the respondent based on the IMEs of the EIP by

Hugh Selznick, M.D. which was performed on June 27, 2024 and Gethun Kifle, M.D. which was performed on July 2, 2024. The IME cut-offs were effective on July 18, 2024 and August 2, 2024, respectively.

The issue to be determined at the hearing is whether the respondent established that the topical and oral medication 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.)

To support its contention that the topical and oral medication provided to the EIP was not medically necessary, the respondent relied upon the report of the independent medical examinations of the EIP by Dr. Selznick and Dr. Kifle which were 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. Selznick and Dr. Kifle performed complete and comprehensive examinations of the EIP which did not identify any objective positive findings and noted that she was status post right ankle sprain/contusion

from a prior injury which was resolved and determined that her injuries related to the subject accident were resolved.

Based upon the physical examination and medical records reviewed, Drs. Selznick and Kifle noted that determined that despite her subjective complaints, the EIP was not disabled and that she could perform her activities of daily living and continue working full time without limitations. It was Dr. Selznick's opinion that there was no medical necessity for further orthopedic treatment, physical therapy, surgery, injections, prescription medication, diagnostic testing, durable medical equipment, household help or special transportation.

Likewise, it was Dr. Kifle's opinion that the EIP had reached an end result of treatment pertaining to the subject accident and determined that physical therapy and pain management were not medically necessary.

Based on the foregoing, the respondent has factually demonstrated that the medical services at issue were 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 reports of the physical examination of the EIP by Dr. Selznick and Dr. Kifle, the applicant relied upon the submissions, including the ER report which notes that the EIP had difficulty ambulating after a prior motor vehicle accident which resulted in a right ankle injury. The report includes complaints of neck pain and results of MRI studies of the total spine which showed no acute injuries but noted degenerative disc injuries.

The submissions also included an initial report dated March 26, 2024 which stated that Dr. Thompson was unable to carry out a physical examination since the EIP was in an air cast for her right ankle.

The EIP was also examined by Dr. Cean on April 3, 2024 which documented some limitations of range of motion in the cervical spine and left shoulder. Dr. Cean performed a follow up evaluation on May 29, 2024 which noted unspecified pain stemming from MVA and did not document any observed range of motion in the cervical spine, bilateral shoulders and knees. The treatment plan was to continue Meloxicam and Diclofenac ointment and continue conservative treatment for 4-6 weeks.

The submissions did not include any further evaluations prior to the IME.

Based on the foregoing, the applicant failed to document sufficient contemporaneous objective findings that would warrant continued treatment after the IME cut-off date.

In this case, the submitted medical records do not sufficiently address the arguments that are raised in the IME and do not establish medical necessity for prescription medication prescribed on June 20, 2025.

Under these circumstances, the respondent has established that the medical services at issue were 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.

06/27/2026
(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:
3a59ef9c8c7e8115b28e382bbd6a7d1a

Electronically Signed

Your name: Anne Malone
Signed on: 06/27/2026