

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Corral Medical Supply Inc.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-26-1439-2664

Applicant's File No. N/A

Insurer's Claim File No. 0808029334

NAIC No. 29688

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 07/27/2026
Declared closed by the arbitrator on 07/27/2026

Roman Kulik, Esq. from Kulik Law Firm, PC participated virtually for the Applicant

Jackie Zurhuhlen, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,554.89**, 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 46 year old EIP reported involvement in a motor vehicle accident on October 3, 2025; claimed related injury and received cervical pillow, collar, bed board, mattress, back cushion, LSO and thermophore provided by the applicant on October 17, 2025.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was timely denied by the respondent based upon peer reviews by Kevin Portnoy, D.C. dated December 5, 2025 and Alexander Merson, M.D. dated December 8, 2025. In response, the applicant submitted a rebuttal dated

January 23, 2026 by Ahmed Elsoury, M.D. who was not one of the EIP's treating medical providers. Drs. Portnoy and Merson submitted addenda dated February 4, 2026 and February 9, 2026, respectively.

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.

In order 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.)

In support of its contention that the medical services provided by the applicant were not medically necessary, respondent relies upon the report of the peer reviews and addenda by Dr. Portnoy and Dr. Merson, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him. Drs. Portnoy and Merson considered possible arguments and justification for the need for the DME at issue and determined that it was not warranted under the circumstances presented.

Both Dr. Portnoy and Dr. Merson reviewed each item of DME and provided his opinion that each was not medically necessary at the time it was provided.

Drs. Portnoy and Merson supported, with relevant medical literature, their opinions that the DME at issue provided to the EIP was not medically necessary.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the DME at issue was 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.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Elsoury who reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Portnoy and Dr. Merson and discussed in detail the injuries sustained by the EIP and the treatment rendered to him. He also discussed each item of DME and his reasons for determining that each was medically necessary. He noted the general benefits of each item and supported with relevant medical citations, his opinion that each item of DME was medically necessary for treatment of injuries such as those sustained by the EIP. However, even in his conclusion he stated that the medical devices provided by the applicant to the EIP were medically necessary and with supervised therapy they were an effective method for treating pain. He did not note any specific reasons why this DME was medically necessary for this particular EIP at the time they were provided.

In response, both Dr. Portnoy and Dr. Merson submitted addenda which essentially reinforced their initial arguments.

After a review of all the evidence submitted an issue of fact remains as to whether the DME at issue was medically necessary. Conflicting opinions have been presented in the peer review and addenda by Dr. Portnoy and Dr. Merson and the rebuttal by Dr. Elsoury submitted on behalf of the applicant.

In this instance, Dr. Elsoury did not submit a rebuttal which meaningfully rebuts the findings of Drs. Portnoy and Merson. In addition, the medical reports submitted do not contradict their assertions.

Therefore, I find that the submissions of Dr. Portnoy and Dr. Merson were 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.

08/16/2026
(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:
cd139817595c40ee26dc5fd1f591496f

Electronically Signed

Your name: Anne Malone
Signed on: 08/16/2026