

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Foremost Pharmacy LLC
(Applicant)

- and -

New South Insurance Company
(Respondent)

AAA Case No. 17-26-1439-8908

Applicant's File No. CF13038393

Insurer's Claim File No. 250915599-001

NAIC No. 12130

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 09/28/2026
Declared closed by the arbitrator on 09/28/2026

Tinamarie Franzoni, Esq. from Choudhry & Franzoni Law Group participated virtually for the Applicant

Anisah Molic, Esq. from Law Offices Of Richard Schoenberg participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,660.48**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant 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 52 year old EIP reported involvement a motor vehicle accident on November 7, 2025; claimed related injury and received Cyclobenzaprine, Ibuprofen, Diclofenac gel and Lidocaine ointment provided by the applicant on November 21, 2025.

The applicant submitted a claim for this prescription medication. The respondent made partial payment for the oral medication pursuant to its determination of the appropriate fee schedule and denied payment for the topical medications based upon a peer review by Robert Cristofaro, M.D. dated December 23, 2025.

The issues to be determined at the hearing is whether the respondent established that the prescription medication 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 Diclofenac gel and Lidocaine ointment prescription medication provided by the applicant were not medically necessary, respondent relies 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 her. Dr. Cristofaro considered possible arguments and justification for the need for the topical prescription medication at issue and determined that it was not warranted under the circumstances presented.

He specifically determined that the oral medication, prescription Cyclobenzaprine and Ibuprofen prescribed for the EIP were necessary and sufficient to treat pain associated with the strain/sprain injuries sustained in the subject accident.

However, he found that the Diclofenac gel and Lidocaine ointment did not meet the standard of care for treatment of these injuries. He also noted that there was no evidence in the medical records to indicate that the EIP failed treatment with the oral medications prescribed or that she required alternative therapy with topical medications.

Dr. Cristofaro supported, with relevant medical literature, his opinion that the injuries sustained by the EIP were sufficiently treated with the oral medications prescribed and were sufficient to decrease pain and inflammation in the EIP's injured areas.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the prescription medication at issue was not indicated for this particular EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, who bears the ultimate burden of persuasion to establish that the prescription medication at issue were medically necessary.

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including the initial evaluation of the EIP by Nicola Houslin, NP on November 20, 2025 at which time the oral and topical medication was recommended.

The plan was for physical therapy, chiropractic treatment and acupuncture, trigger point injection, EMG/NCV testing, functional capacity testing, MRI studies of the cervical, thoracic and lumbar spine, bilateral shoulders and right knee, psychiatric evaluation and the oral and topical medications at issue.

In this case, the applicant did not provide a rebuttal to the peer review and therefore it did not respond to the respondent's argument that the topical prescription medication provided to the EIP was a deviation from a reasonable medical standard of care. The medical records alone are not sufficient to rebut the conclusions of Dr. Cristofaro.

Based on the foregoing, I find that the respondent established that the topical prescription medication 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.

10/10/2026
(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:
83a29c2e78e1bd090dd22d1fc80a89fc

Electronically Signed

Your name: Anne Malone
Signed on: 10/10/2026