

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Y.A.M. Medical Supply, Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1028-3902

Applicant's File No.

Insurer's Claim File No. 026706414-0101-092

NAIC No. 22055

ARBITRATION AWARD

I, Ioannis Gloumis, 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 03/29/2017
Declared closed by the arbitrator on 03/29/2017

Cathryn Roberts, Esq. from Gene Sigalov Esq. participated in person for the Applicant

Brian Fausi, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,346.76**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to the amount in dispute and to the timeliness of the Respondent's denial of the subject claim.

3. Summary of Issues in Dispute

According to the evidence submitted and contained in the electronic case folder for this matter, the subject of this dispute arises from the underlying automobile accident of July 1, 2015, in which the EIP, then a 45-year-old female, was reportedly injured when the vehicle that she was traveling in was involved in an automobile accident. Following the occurrence, the EIP reported injuries to the cervical spine, lumbar spine and bilateral

shoulders. Subsequently, the EIP sought private medical attention from Dr. Woo Kang initially on July 5, 2015 and underwent conservative treatment consisting of physical therapy treatment, chiropractic treatment and acupuncture treatment.

Dr. Kang prescribed a cervical traction unit ("CTU") and a lumbosacral orthosis ("LSO") for the EIP to use at home, which were provided to the EIP on September 15, 2015. Applicant seeks No-Fault reimbursement in the amount of \$1,346.75 for the LSO and CTU. The Respondent received the billing for the subject claims from the Applicant and timely denied the claims based upon peer review reports from Dr. Robert Sohn. Thus, the issue to be determined is whether the Respondent has established its prima facie burden of lack of medical necessity for the DME items; and, if so, whether the Applicant has successfully rebutted same.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions documents contained in the American Arbitration Association's Electronic Case Folder, said submissions constituting the record in this case. This award is rendered upon the oral arguments of the parties at the arbitration hearing date and the documentary evidence submitted by the parties. There were no witnesses that testified at the arbitration hearing for this matter.

A prima facie case of entitlement to No-Fault compensation is made out by submitting evidence that the prescribed statutory billing form has been mailed and received, and that the defendant failed to either pay or deny the claim within the requisite 30-day period. *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); *Westchester Medical Center v. Clarendon National Ins. Co.*, 57 A.D.3d 659, 868 N.Y.S.2d 759 (2d Dept. 2008); *New York and Presbyterian Hosp. v. Allstate Ins. Co.*, 31 A.D.3d 512, 818 N.Y.S.2d 583 (2d Dept. 2006).

An insurer's denial of claim form indicating the date on which it was received adequately establishes that the claimant sent, and that the defendant received the claim. *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97, 804 N.Y.S.2d 532 (App. Term 9th & 10th Dists. 2005).

After reviewing the evidence presented, and based upon the stipulations between the parties, I find that Applicant has submitted sufficient credible evidence to establish its prima facie case. Additionally, I find that the Respondent timely denied the subject claims in dispute based upon a defense of lack of medical necessity.

RESPONDENT'S DEFENSE OF LACK OF MEDICAL NECESSITY

Respondent relies upon the peer review reports of Dr. Sohn. In his peer review report, Dr. Sohn states that that cervical traction is considered a skilled manipulative technique that should only be administered under the supervision of a trained licensed professional and that cervical traction was clearly not identified in the chiropractic treatment notes as being part of the in-office chiropractic treatment program to either the cervical or lumbar spine. Dr. Sohn further states that if cervical traction was to be administered, it should

be administered with proper supervision. According to Dr. Sohn, a cervical traction unit provided for home care use is not able to isolate or detect where the actual subluxations exist from a day-to-day basis and that cervical traction can only go from an inferior to a superior plane and is provided in the generalized area of the cervical spine. Dr. Sohn states that home use of the cervical traction unit is in appropriate.

In regards to the LSO, Dr. Sohn states that the LSO is designed to restrict and to immobilize in order to promote healing of the spine and the soft tissue musculature through restriction and immobilization; that, the primary goal of chiropractic is the restoration of aberrant joint mobility through chiropractic manipulative techniques; that there clearly was no indication of any fracture that was sustained in the area of the thoracic and lumbosacral coccygeal junction; that there was no indication of any dislocation in that particular region; and, that was no indication of any spinal surgery being administered as part of the injuries sustained from this motor vehicle accident that would warrant restriction or immobilization. Dr. Sohn further states that this particular device would not be complementary towards the treatment goals of chiropractic, which is restoration of aberrant joint mobility through chiropractic manipulation. Dr. Sohn then states that an LSO may be useful for specific treatment of spondylolysis, documented instability, or postoperative treatment in the absence of significant leg length discrepancy; however, they are not recommended in the treatment of the lower back. Dr. Sohn provides that the LSO was not medically necessary.

I find that based upon the peer review reports of Dr. Sohn, the Respondent has successfully established its prima facie burden of lack of medical necessity for the LSO and CTU.

APPLICANT'S REBUTTAL

Applicant submits the rebuttal as a letter of medical necessity from the Dr. Kang, the prescribing chiropractor. Dr. Kang states that the MRI of the cervical spine performed on August 4, 2015 identified herniations at C6-7, stenosis with straightening of the spine with loss of the normal cervical lordosis; and, that the MRI of the lumbar spine performed on August 11, 2015 identified L4-5 facet joint synovial cyst and transitional L5 vertebral body with sacralization of the L5 level. Dr. Kang states that based upon these results, and the positive findings in the physical examination, it is his opinion that the CTU and LSO were medically necessary in the EIP's treatment plan.

Dr. Kang states that he disagrees with the opinion of Dr. Sohn that the CTU should only be performed in the supervised setting by trained professionals and that the device can be used at home by the patient with proper instruction. The CTU was prescribed for therapeutic relief of the herniated discs. Dr. Kang states that literature widely supports the use of the CTU and its efficacy. In regards to the LSO, Dr. Kang states that if used properly, the LSO provides support to enable the patient to perform activities of daily living. It is Dr. Kang's opinion that the restrictions provided by the LSO not only provide relief, but also prevent further pain or injury; that the LSO allows the muscles to relax, thereby promoting movement, and not restriction. Dr. Kang states that although he agrees that the LSO is used in cases of spinal instability and fracture, it is his opinion that it is also used in primary care to reduce pain and improve mobility. He continues to

discuss that the goal of the prescription of the LSO was to reduce pain and promote quicker healing. Dr. Kang's opinion is that the DME items prescribed were medically necessary and effective as part of the treatment plan.

DECISION

Following complete review of the evidence presented, I find that the Applicant has failed to successfully rebut the peer review reports of Dr. Sohn and the Respondent's case of lack of medical necessity. Applicant has failed to demonstrate that the CTU and LSO items were medically necessary for this specific EIP's treatment plan, in addition to the in-office conservative treatment. I remain persuaded by the peer review reports and opinion of Dr. Sohn and find that the CTU and LSO DME items were not medically necessary in this matter.

Accordingly, the Applicant's claims are hereby denied in their entirety.

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 New York

SS :

County of Nassau

I, Ioannis Gloumis, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

03/30/2017

(Dated)

Ioannis Gloumis

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:
62c5d900f43157f56199c1d6ab31d55c

Electronically Signed

Your name: Ioannis Gloumis
Signed on: 03/30/2017