

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tremont Chemist
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-16-1046-7055

Applicant's File No. 261556, 267791,
273821

Insurer's Claim File No. 527956

NAIC No. Self-Insured

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person

1. Hearing(s) held on 11/15/2017
Declared closed by the arbitrator on 12/16/2017

James Mulhern, Esq. from Leon Kucherovsky Esq. participated in person for the Applicant

Craig Marshall, Esq. from Marshall & Marshall, Esqs. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,470.69**, 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

Are the prescriptions for pain medication medically unnecessary?

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for medications provided on 9/4/15 (Methocarbamol and Terocin), 11/20/15 (cyclobenzaprine and methocarbam tabs) and 1/27/16

(Methocarbamol and Terocin) following an accident on 5/28/15. The charges were timely denied based on peer reviews by Dr. Hadhoud, PM&R, who determined the prescriptions were medically unnecessary.

The peer reviewed the initial physical therapy evaluation on 7/22/15 and notes this was a 38 year old female who presented for therapy with complaints of neck, back, shoulder, elbow, wrist, knee and ankle pain. There was tenderness and decreased range of motion.

The peer states the Methocarbamol Tab was unnecessary to treat the patient's pain because it is a muscle relaxant used to relieve skeletal muscle spasms and associated muscle pain in acute musculoskeletal conditions. The peer cites to the Workers' Compensation Guidelines which recommend against the use of muscle relaxants for mild to moderate acute neck pain or for chronic use in subacute or chronic neck pain. This was not the case here. Rather, they are a second-line treatment for selected cases of moderate to severe acute neck pain and in most cases, other medication, progressive walking and other exercises will be sufficient to control the symptoms.

The Terocin patch was also unnecessary according to the peer. The standard treatment of NSAIDs, therapy and exercises are sufficient in cases of acute musculoskeletal injuries. In addition, there is no evidence of the efficacy of such topical analgesics in the treatment of such injuries.

On follow up on 11/20/15 Methocarbamol and cyclobenzaprine were again prescribed. On exam there was decreased range of motion and tenderness; 4/5 motor strength and decreased sensation. Reflexes were intact. The peer states that the meloxicam tab is an NSAID and as such was necessary; however, the muscle relaxant (cyclobenzaprine) prescribed this day was unnecessary. Citing the WCG and ODG (Guidelines) the peer states NSAIDs should be tried first which was in this case but that muscle relaxant is unnecessary in addition to NSAIDs as there is no evidence of efficacy when prescribed with NSAIDs as it was here and its use is not recommended in this setting of acute MS injuries.

On 1/27/16 Terocin lotion containing Lidocaine and Capsaicin was prescribed and was unnecessary as such a lotion is not standard first line treatment. Oral NSAIDs are effective in treating symptoms of acute sprain/strain injuries such as these. If after 3 to 4 weeks symptoms persist and become chronic the patient may be prescribed topical Capsaicin, the only WCB approved topical medication. Otherwise, there is no evidence of the efficacy of such a compound cream/lotion or benefit over and above oral medications.

Again the cyclobenzaprine was unnecessary as muscle relaxants are unnecessary as there is no evidence of efficacy when prescribed with NSAIDs as it was here and its use is not recommended in this setting of acute MS injuries.

In rebuttal Dr. Tamburo, DO, states the patient sustained soft tissue injuries with pain, tenderness, decreased range of motion, etc. and describes the exam findings which are

consistent with the peer's description. The rebuttal contends the symptoms and ADL restrictions persisted throughout the period at issue herein and therefore, the medications/topicals were necessary.

The rebuttal contends that muscle relaxants (cyclobenzaprine and methocarbamol) are appropriate prescriptions under these circumstances and were proper prescriptions. The rebuttal at no point addresses the peer's contention that same were unnecessary and not recommended when prescribed with NSAIDs as it was here. The rebuttal fails to address any fact which rendered such a prescription necessary or to point to any rationale by the treating physician which the peer states was not documented.

In addition, the rebuttal contends the topicals are also appropriate for pain control based on increasing evidence which supports their efficacy. Again, the rebuttal fails to address any specific reason why topicals were necessary for this patient or to point to any rationale by the treating physician which the peer states was not documented.

I find the peer is adequate to sustain respondent's burden of proving lack of medical necessity through a factual basis, medical rationale and standards of care. The peer shifts the burden to applicant to demonstrate medical necessity.

The rebuttal fails to establish medical necessity for the muscle relaxants other than the general and conclusory statement that they are routinely prescribed for acute MS injuries. The peer's contention that there is no evidence of their efficacy when prescribed with NSAIDs was supported by authorities but the rebuttal fails to adequately demonstrate otherwise or provide support for its conclusory statements.

The topical medication was also not shown to be necessary. There is no indication why it was being used instead of traditional oral analgesics and in the absence of recommendation or evidence of its efficacy or any reason why it was necessary here I find the peer more persuasive and deny the charges for the patch and lotion.

The rebuttal contends also that topical medication avoids other side effects, like nausea, constipation or dizziness, none of which were reported for this patient. In summary, no factual support for these medications was provided either in the records or by the rebuttal.

In summary, the treatment records and rebuttal fail to indicate any factor involving this patient for the prescription of a topical patch or lotion rather than oral NSAIDs and muscle relaxants which was the peer's main contention.

The addendum by Dr. Hadhoud confirms these points primarily, that there is no reason for the prescription of the topical medication and no standard under these circumstances to use such medications instead of oral analgesia. There is also no reason for muscle relaxants based on the peer's contention that muscle relaxants are unnecessary as there is no evidence of efficacy when prescribed with NSAIDs as it was here and its use is not recommended in this setting of acute MS injuries.

The only other statements made by the rebuttal are general and conclusory and do not address the specific points raised by the peer. The statement by the rebuttal osteopath that there is no standard is not accurate according to the peer who counters with a reasonable response that you can give anything you want to a patient but that is not good medical practice or consistent with established standards of care for treating basic musculoskeletal injuries which were documented here.

In the absence of any rebuttal evidence the peer prevails and the charges are denied.

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 Suffolk

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

12/21/2017
(Dated)

Camille Nieves

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:
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Electronically Signed

Your name: Camille Nieves
Signed on: 12/21/2017