

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ortho Pro Services, Inc.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-16-1042-6478
Applicant's File No.	1878163
Insurer's Claim File No.	0067946940101136
NAIC No.	35882

ARBITRATION AWARD

I, Kevin R. Glynn, 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: Assignor

1. Hearing(s) held on 06/07/2018, 06/14/2018
Declared closed by the arbitrator on 06/07/2018

Ryan Berry, Esq. from Israel, Israel & Purdy, LLP participated in person for the Applicant

Robert Barnes, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 502.63**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

Respondent stipulated that Applicant established a prima facie case and Applicant stipulated that Respondent issued a timely denial. Both parties stipulated that the amount in dispute is in compliance with the New York Workers' Compensation Fee Schedule.

3. Summary of Issues in Dispute

The Assignor, AS, is a 56yo female passenger who was injured in a motor vehicle accident on 3/28/16. AS suffered injuries which resulted in her seeking treatment. In dispute is the Applicant's claim for cervical traction equipment in the amount of \$502.63, provided on 6/8/16. The claim was denied based on a peer review report by Dr.

Christopher Ferrante, D.C., dated 8/1/16. Therefore, the medical necessity of the claim is at issue.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon. 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 determination that there was a lack of medical necessity for the services rendered." See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2d, 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 generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. 2006 NY Slip Op 52116 (App Term 1st Dept. 2006). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). In order to meet the burden of persuasion in regard to medical necessity - in the absence of factually contradictory records - the applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. See generally, Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009].

Respondent's evidence established that the bill was timely denied pursuant to a peer review report by Dr. Christopher Ferrante, D.C., dated 8/1/16. After listing the medical records he reviewed and presenting a clinical history of the Assignor, Dr. Ferrante opines that the cervical traction unit was not medically necessary. He states that mechanical traction was not a component of the treatment program utilized by the treating chiropractor and that if traction was necessary, it should have been utilized at the office treatments under the treating doctor's supervision. He opines that traction should not be performed by the patient on their own and that the doctor has no way of knowing if the traction unit is being used correctly or in compliance with treatment frequency. He opines that use of traction should be supervised by the physician or physical therapist. He opines further that the patient should have undergone a trial of traction with the treating doctor to determine if it would be beneficial as the prescribing doctor has no way of knowing in advance if the traction unit would be beneficial to this patient. He states that the documents do not indicate that the patient was advised on the proper use of the traction unit or that the patient understood its use. He states that there was no indication of any follow-up by the treating chiropractor on the patient's use of the

traction unit or any changes in the patient's condition with its use. He notes that the New England Journal of Medicine article from 2005 stated that no conclusion could be drawn about the efficacy of cervical traction.

I find that Respondent has presented a sufficient medical rationale and factual basis to support its defense of lack of medical necessity. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See, Bronx Expert, supra.

Applicant relies upon the rebuttal report by Dr. Salvatore Germino, D.C., dated 4/23/18. Dr. Germino opines that Dr. Ferrante did not consider the Assignor's significant radicular symptoms which indicated trauma to the cervical spine resulting in nerve root pathology. He opines that cervical traction is an effective treatment for cervical radiculopathy and that use of the cervical traction equipment at home would help alleviate the symptoms resulting from a herniated or bulging disc. He notes that a cervical traction device is used to relieve pain and nerve root compression and when used properly and safely, traction can be a very effective approach for improving joint mobility, relieving nerve and disc compression, improving posture and relieving pain. He notes that if "no conclusions could be drawn" by the review referred to by Dr. Ferrante, then this does not mean that cervical traction is not medically necessary, but that more quality research needs to be done in order to establish the clinical efficacy of traction. Nevertheless, he opines that cervical traction has been shown to be an effective treatment for cervical radiculopathy, symptoms of which he notes that this patient demonstrated upon evaluation.

In response to Dr. Germino's rebuttal, Respondent submits an addendum report by Dr. Ferrante, dated 6/5/18. He notes that the records do not indicate a trial of cervical traction prior to prescribing the home unit and that if the findings and MRI results indicated cervical disc injury then a trial of traction under the treating doctor's supervision should have taken place. He states that while the traction may be beneficial it is the treating doctor's responsibility to determine that traction is safe and an effective form of treatment for each individual patient, noting that the traction may cause exacerbation of symptoms in patients. He states that no follow-up of how the cervical traction unit was utilized is reported in the records or the rebuttal. He states it was not noted how the patient's condition responded to the traction and that when prescribing medical supplies the treatment plan should be noted and the response to their use should be documented in the chiropractic progress notes or follow-up evaluations.

Applicant's counsel argues in response that there is nothing in the record to indicate that there was no in-office traction, however this ignores the fact that Dr. Germino, the treating chiropractor, prepared a rebuttal report and never even alleged to have provided such in-office treatment. I find Respondent's peer and addendum reports more persuasive and I find that by a preponderance of the evidence Applicant has failed to establish the medical necessity of the claim. Accordingly, Applicant's claim is 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 Nassau

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

07/03/2018

(Dated)

Kevin R. Glynn

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:
57c8965ac5ddc54dca1eaa85a74c1987

Electronically Signed

Your name: Kevin R. Glynn
Signed on: 07/03/2018