

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

OrthoPro Services, Inc.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-18-1093-5126
Applicant's File No. 2090640
Insurer's Claim File No. 0522184540101012
NAIC No. 22063

ARBITRATION AWARD

I, Lester Hill, 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 12/13/2019
Declared closed by the arbitrator on 12/13/2019

Stacy Mandel Kaplan from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Chelsea Waller from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,279.58**, 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

Were the cervical traction unit and lumbar sacral orthosis and TENS unit provided to the EIP on February 19, 2018 medically unnecessary based upon the peer report by Dr. Ron Amidror? The 30-year-old EIP was involved in a motor vehicle accident on July 30, 2017 and received treatment for injuries to the neck and low back.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the cervical traction unit and lumbar sacral orthosis and TENS unit provided to the EIP on February 19, 2018 were medically unnecessary.

The basis of the respondent's denial is the peer report by Dr. Ron Amidror.

I reviewed the documents contained in the electronic case folder as of December 13, 2019. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on December 13, 2019.

An Applicant establishes a prima facie showing of its entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and the payment of No-Fault benefits were overdue. 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); LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co., 30 A.D. 3d 727, 816 N.Y.S. 2d 587 (3d Dept. 2006); Nyack Hospital v. Metropolitan Property & Casualty Insurance Co., 16 A.D.3d 564, 791 N.Y.S. 2d 658 (2d Dept. 2005).

The submission of Respondent's NF-10 denial of claim form established that the insurer received the claim referenced therein as having been submitted by the provider and that the insured did not pay the claim. Lopes v. Liberty Mutual Ins. Co., 24 Misc.3d 127 (A), 2009 N.Y. Slip Op. 51279(U), 2009 WL 1799812 (App. Term 2d, 11th & 13th Dists. Jan. 26, 2009).

New York's Comprehensive Motor Vehicle Insurance Reparation Act requires an insurance carrier to reimburse an injured party (or his or her assignee) for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. Countrywide Ins. Co v. 563 Grand Med., P.C. 50 A.D. 3d 313 (1st Dept. 2008); A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co., 39 A.D. 3d 779 (2d Dept. 2007), if raised in a denial that is (1) timely, Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co., 226 A.D. 2d 613 (2d Dept. 1996), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR Section 65-3.4 (11); Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co., 16 A.D. 3d 564 (2d Dept. 2005); Nyack Hosp. v. State Farm Mut. Auto Ins. Co., 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct.25 2004), and (3) promptly apprises the Applicant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated, General Accident Ins. Group v. Cirucci, 46 N.Y. 2d 862, 414 N.Y.S. 2d 512 (1979); New York University Hosp. Rusk Ins. V. Hartford Acc. & Indem. Co., 32 A.D. 3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co., 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on July 30, 2017. The EIP underwent MRIs of the cervical and lumbar spine on September 23, 2017 which reported a normal cervical study with straightening of the cervical lordosis and a disc herniation at L5-S1. The EIP presented to Drs. Abrams, Piazza, and Julewicz on September 28, 2017 with complaints of pain in the neck and low back. The examination reported decreased range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine and tenderness in the cervical and lumbar musculature. The EIP was placed on a course of conservative treatment. The EIP underwent electrodiagnostic testing of the lower extremities on October 14, 2017 which reported right lower extremity posterior ramus dysfunction. The EIP underwent electrodiagnostic testing of the upper extremities on November 10, 2017 which reported a normal study. The EIP presented to Alpha Neurology on January 23, 2018 with complaints of pain in the neck and low back. The examination reported decreased sensation in the upper and lower extremities and decreased deep tendon reflex in the left brachioradialis. The EIP presented to Drs. Abrams, Piazza, and Julewicz on January 24, 2018 with complaints of pain in the neck and low back. The examination reported decreased range of motion of the cervical and lumbar spine with positive orthopedic testing for the cervical and lumbar spine and tenderness in the cervical and lumbar musculature. The EIP was prescribed a cervical traction unit, lumbar support orthotic and TENS unit which were provided to the EIP on February 19, 2018.

Dr. Amidror submitted a rebuttal asserting that the lumbar support orthotic, cervical traction unit, and TENS unit were medically unnecessary. With respect to the lumbar support orthosis, he states there was no documentation of segmental instability, dislocation or fracture and that immobilization is contraindicated for chiropractic manipulation. He states that the lumbar support orthotic can increase trunk stiffness. With respect to the cervical traction unit, he states that the EIP did not attempt cervical traction in the in-office setting and that a trial of cervical traction should have been administered to determine the efficacy of this treatment prior to the contemplation of prescription for cervical traction unit. He cites Physical Therapy, 2009 that there is insufficient evidence of the efficacy of cervical traction. With respect to the TENS unit, he states that the New York State Workers Compensation Medical Treatment Guidelines do not recommend the use of TENS therapy for acute back pain, subacute back pain or acute radicular pain syndromes. He cites that TENS therapy is not recommended for the treatment of chronic low back pain, citing the Yale Journal of Biological Medicine, 2012.

Dr. Denny Julewicz, the EIP's treating physician and prescriber of the durable medical goods, submitted a rebuttal asserting that the durable medical goods were medically necessary. He states that cervical traction is an effective treatment for cervical radiculopathy. He states that the lumbar support orthotic helps prevent the

aggravation of spine injuries and is not complete immobilization but prevents excessive movement of the lumbar spine. He states that TENS therapy has been demonstrated to be effective in the treatment of pain syndromes, citing Orthopedics, 2013.

I find that the respondent has demonstrated by sufficient factual basis and medical rationale that the cervical traction unit was medically unnecessary. I am persuaded by the peer report that a trial course of cervical traction should be administered in the supervised in office setting prior to the prescription for any home device to determine whether not this treatment modality is effective. There is no evidence that the EIP did undergo supervised traction therapy prior to the prescription for the home unit.

I find that the respondent has not demonstrated by sufficient factual basis and medical rationale that the lumbar support orthotic and TENS unit were medically unnecessary. With respect to the lumbar support orthotic, I find the rebuttal persuasive that the device does not totally immobilize the spine but prevents excessive movement which could aggravate the EIP's condition and is not contraindicated to the goals of chiropractic treatment to expand the range of motion. With respect to the TENS unit, while there may be a dispute in the medical community regarding the efficacy of this type of therapy, I am not persuaded by the peer report that there is no evidence guarding the efficacy for the treatment of pain with TENS therapy.

Accordingly applicant is awarded \$907.88 for the lumbar support orthotic and TENS unit and all other claims 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	OrthoPro Services, Inc.	02/19/18 - 02/19/18	\$1,279.58	Awarded: \$907.88
Total			\$1,279.58	Awarded: \$907.88

B. The insurer shall also compute and pay the applicant interest set forth below. 04/25/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded, in accordance with 11 NYCRR 65-3.9, on first party benefits awarded at the rate of 2% per month, simple, from April 12, 2018 as the arbitration was filed within 30 days upon receipt of the denial and ending with the payment of this award.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

Respondent shall pay Applicant's attorney's fees, in accordance with 11 NYCRR 65-4.6, at the rate of 20% of the total amount awarded, including interest, to a maximum attorney's fee of \$1360.00.

D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Kings

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

12/17/2019
(Dated)

Lester Hill

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:
09955f65baa5c0e255a7bc87dfa09547

Electronically Signed

Your name: Lester Hill
Signed on: 12/17/2019