

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

I Am Supplies Inc.
(Applicant)

- and -

Enterprise Rent A Car
(Respondent)

AAA Case No. 17-20-1159-2410

Applicant's File No. 2020-176

Insurer's Claim File No. 15019395

NAIC No. Self-Insured

ARBITRATION AWARD

I, Debbie Kotin Insdorf, 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 09/15/2020
Declared closed by the arbitrator on 09/15/2020

David O'Connor, Esq. from Jackson Legal Group PC participated by telephone for the Applicant

Jamilah Shukry, Esq. from McCormack, Mattei & Holler participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,150.00**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The amount billed is correct.

3. Summary of Issues in Dispute

The Applicant seeks reimbursement of charges for a custom fitted LSO supplied to the Assignor, TS, following a motor vehicle accident on 9/09/19. The Respondent issued a timely denial based on a peer review by Dr. Harry E. Jackson.

4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for \$1,150.00 for a custom fitted LSO supplied to the Assignor on 1/10/20.

The Respondent issued a timely denial based on a peer review.

On 9/09/19, the twenty six year old was a passenger in a motor vehicle when an accident occurred. He was taken to the emergency room at Kings County Hospital for evaluation.

On 9/09/19, the Assignor was evaluated by Dr. Hong Pak. The Assignor's complaints included radiating low back pain with stiffness. Examination of the lumbar spine revealed decreased range of motion with pain. Deep tendon reflexes were 2+ except for bilateral Brachioradialis (1+), Patellar (1+) and Ankle (1+). Sensation was intact. Muscle strength was decreased (no details provided).

The doctor's treatment plan included physical therapy. The doctor prescribed various devices which included LSO/LS support.

On 1/08/20, Dr. Stanley Kim wrote a prescription for a custom fitted LSO. It was delivered to the Assignor on 1/08/20.

On 2/07/20, Dr. Harry E. Jackson reviewed documents made available to him to determine the medical necessity for the custom fitted LSO. He did not find it medically necessary.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co., 196 Misc.2d 801, 766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply

the facts of the case and only then may she properly conclude the services in issue were not medically necessary due to the provider's violation of the generally accepted medical standards.

Dr. Jackson noted that the medical records indicated the Assignor sustained soft tissue injury. The diagnosis was lumbar sprain/strain. The appropriate treatment is physical therapy and analgesics. The LSO is restricting and contraindicated in this case.

In the instant case, the conclusion of the peer reviewer upon which the denial was based was supported by a sufficient factual foundation and medical rationale to warrant rejection of Applicant's claim and accordingly, was sufficient to support the defense of medical necessity.

The burden now shifts to applicant to refute Respondent's evidence. See, Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 2008 NY Slip Op 50347 (U) (App Term 2d Dept., Feb. 21, 2008); A. Khodadadi Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 16 Misc.3d 131,(A), 841 N.Y.S.2d 824 (Table), 2007 NY Slip Op 51342 (U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007).

A rebuttal was written by Dr. Stanley Kim. He wrote the Assignor still had pain and reduced range of motion despite 4 to 6 weeks of conservative care. Dr. Kim indicated the LSO was prescribed to remind the Assignor to avoid excessive movement, encourage proper body mechanics and maintain good posture.

Dr. Kim wrote that DME are useful for patients who benefit from their use on days when they are not receiving in-office treatment. The LSO supports, not immobilizes completely. The LSO facilitates healing.

Dr. Kim noted Dr. Pak examined the Assignor on 9/09/19. He wrote, "...Numbness and tingling sensation was noted at lower extremity with stiffness...muscle spasm was at lumbosacral paravertebral." Dr. Pak's report was submitted and it did not reveal muscle spasm or numbness/tingling sensations at lower extremities.

The custom fitted LSO was prescribed on 1/08/20, months after the 9/09/19 examination.

Dr. Kim did not mention that an LSO was prescribed by Dr. Pak on 9/09/19, the same day as the initial visit. It was also the same day as the accident. Then, a custom fitted LSO was prescribed on 1/08/20. There was no narrative report indicating the Assignor's subjective and positive objective findings around the time Dr. Kim prescribed the custom fitted LSO.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I find there was insufficient evidence to refute the conclusion reached by Respondent's peer reviewer. The Respondent's denial is upheld.

Accordingly, the 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 New York

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

10/05/2020
(Dated)

Debbie Kotin Insdorf

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:
a819be802dd93d96fd638a255bb03bfa

Electronically Signed

Your name: Debbie Kotin Insdorf
Signed on: 10/05/2020