

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Elite Medical Supply of New York, LLC  
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company  
(Respondent)

AAA Case No. 17-20-1161-8455

Applicant's File No. 107349

Insurer's Claim File No. 0559374616 2N1

NAIC No. 29688

### **ARBITRATION AWARD**

I, Michelle Murphy-Louden, 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 11/23/2020  
Declared closed by the arbitrator on 11/23/2020

Scott Lupiani, Esq. from Scott M. Lupiani, Esq. participated by telephone for the Applicant

Julie Iacobucci, Esq. from Law Offices of John Trop participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,244.22**, 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

Whether Applicant is entitled to reimbursement for a lumbosacral orthosis (LSO) and cervical traction unit dispensed on December 9, 2019, as a result of an August 30, 2019, motor vehicle accident.

Respondent denied reimbursement based upon a January 7, 2020, peer review of Bonnie Corey, D.C.

This Award is based upon a review of all of the documents contained within the ADR electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

#### 4. Findings, Conclusions, and Basis Therefor

The 37 year old EIP was reportedly involved in a motor vehicle accident on August 30, 2019, when the vehicle he was driving was rear-ended.

According to the records, on September 4, 2019, the EIP presented for initial chiropractic evaluation with Frank Amatulli, D.C., reportedly complaining in part of neck pain radiating to the left arm with numbness and tingling and lower back pain radiating to the right leg with numbness and tingling. Following examination, Dr. Amatulli diagnosed the EIP in part with cervical and lumbar sprain, cervical and lumbar nerve root injury, rule out cervical and lumbar HNP, and rule out cervical and lumbar radiculopathy.

On October 16, 2019, the EIP underwent cervical and lumbar MRI's. The cervical MRI was with the impression of C5-C6 superimposed midline disc herniation impressing on the ventral margin of the cord, C3-C4 midline posterior disc herniation abutting the ventral cord with a right lateral component extending into and narrowing the right foramen with right C4 nerve root impression, C4-C5 right lateral disc herniation into the foramen causing right C5 nerve root impression, and kyphosis with the apex at C5-C6 with evidence for muscular spasm. The lumbar MRI was with the impression of L1-L2 through L3-L4 posterior subligamentous disc bulging, L4-L4 posterior subligamentous disc herniation accompanied by 1-2 mm retrolisthesis with ventral thecal sac impression, new midline radial annular tear and abutment of the right L5 nerve roots, and L5-S1 broad posterior subligamentous disc herniation accompanied by 2 mm retrolisthesis, ventral thecal sac impression and abutment of the S1 nerve roots.

On November 1, 2019, the EIP underwent upper and lower extremity EMG/NCV studies which reportedly revealed evidence of left C6 and left S1 radiculopathies.

On November 16, 2019, Dr. Amatulli prescribed an LSO and cervical traction unit.

### **RESPONDENT'S PEER REVIEW**

On January 7, 2020, Bonnie Corey, D.C., performed a peer review of the LSO and cervical traction unit which she concluded were not medically necessary. Dr. Corey opined in significant part:

There was no medical necessity for the lumbar sacral orthotic brace that was prescribed. There is no indication from the medical records that there was any lumbar spine instability to warrant the prescription and need for a lumbar brace. There was no indication of any ligamentous instability or severe muscle weakness that warrants any supportive medical devices for the lumbar spine. When there is no ligament instability or fracture the goal of soft tissue rehabilitation is to encourage motion, not limit it.

The standard of care for this type of device would be for the indication of ligamentous instability or severe muscle weakness, post operative, compression fractures that warrants supportive medical devices to facilitate healing for the lumbar spine.

The criteria for medical necessity for this type of a device have clearly not been met.

When there is no ligament instability or fracture, the goal of soft tissue rehabilitation is to encourage motion, not limit it. Chiropractic spinal manipulation to the lumbar spine is being rendered. There is no medical necessity for this type of LSO device to be prescribed when the claimant is undergoing active physical therapy and chiropractic treatment where the documented goal is to increase ranges of motion and flexibility, where the prescribed lumbosacral orthotic would restrict motion.

There was no indication from the records that the claimant's condition has failed with conservative chiropractic treatment and an LSO would have changed the outcome of the claimant's condition...

The aim should be to restore physiologic function that supports the spine through action

of the muscles rather than through an external orthotic device.

...There was no medical necessity based upon the clinical presentation in this particular case for a cervical traction unit.

There was no indication that the claimant's condition was failing to improve with the recommended conservative chiropractic treatment plan and that above cervical traction would have changed the outcome of the claimant's condition.

There was no medical necessity based upon the clinical presentation and treatment regimen of this particular claimant.

It is also not evident from the documentation that a successful clinical trial was utilized in order to determine the effectiveness and/or response to the treatment, that an individual is able to tolerate the device before the issuance...

As per the NYS WC 2014 Medical Treatment Guidelines section "Other Orthoses, Devices and Equipment" Special orthoses or equipment may have a role in the rehabilitation of a cervical injury such as those injuries to a cervical nerve root resulting in upper extremity weakness or a spinal cord injury with some degree of paraparesis or tetraparesis. Use of such devices would be in a structured rehabilitation setting as part of a comprehensive rehabilitation program.

Please note there was no progressive neurological impairment or progressive neurological compromise of the cervical spine.

Based upon Dr. Corey's opinion, Respondent denied Applicant's claim.

### **ANALYSIS**

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s).

Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2<sup>nd</sup> Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut., 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Corey's peer review fails to set forth a clear factual basis and a medical rationale for Respondent's denial of Applicant's claim for the LSO and cervical traction unit in dispute herein and as such I find that Respondent has failed to establish a lack of medical necessity for same.

The only records of Dr. Amatulli reviewed by Dr. Corey were Dr. Amatulli's initial examination report and prescription. Dr. Corey never reviewed any of Dr. Amatulli's treatment notes. It is to be noted that while Dr. Corey also reviewed her independent medical examination (IME) report of December 11, 2019, "and the records contained therein", according to Dr. Corey's IME report the only medical records she reviewed were the report of cervical, thoracic and lumbar x-rays performed by Dr. Amatulli on initial examination, Dr. Amatulli's initial examination report, Dr. Amatulli's prescription for the cervical and lumbar MRI's, and the reports of the cervical and lumbar MRI's.

Based upon Dr. Corey's failure to review Dr. Amatulli's complete medical records I find that there is no factual basis upon which Dr. Corey could state that there was no indication that the EIP's condition was not failing to improve with treatment, that the EIP did not exhibit any clinical signs of lumbar spine instability or muscle weakness, that a trial of cervical traction was not performed in-office, or that there was no progressive neurological impairment or progressive neurological compromise of the cervical spine. Therefore, Respondent's denial cannot be upheld.

With respect to the amount of interest awarded Applicant herein, same is to be calculated in accordance with 11 N.Y.C.R.R. §65-3.9(c) as Applicant did not request arbitration within 30 days of receipt of the denial of claim form. The commencement date of the interest awarded shall be, per advisement of the Department of Financial Services, the date on which Applicant's request for arbitration was received by AAA. According to AAA's electronic case file Applicant's request for arbitration was received via e-mail by AAA on April 9, 2020. Therefore, Respondent shall pay Applicant interest commencing April 9, 2020, to the date of payment of this Award.

**ACCORDINGLY, APPLICANT IS AWARDED THE AMOUNT OF \$1,244.22 TOGETHER WITH INTEREST, ATTORNEY'S FEE, AND FILING FEE AS SET FORTH BELOW.**

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
	Elite Medical Supply of New York, LLC	12/09/19 - 12/09/19	\$1,244.22	Awarded: \$1,244.22
<b>Total</b>			<b>\$1,244.22</b>	<b>Awarded: \$1,244.22</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/09/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to 11 N.Y.C.R.R. §65-3.9(a), the insurer shall calculate interest at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month.

Pursuant to 11 N.Y.C.R.R. §65-3.9(c), if an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken.

Since Applicant herein did not request arbitration within 30 days of receipt of the denial of claim form, Respondent shall pay interest from the date the arbitration was commenced as set forth above to the date of payment of the Award in accordance with 11 N.Y.C.R.R. §65-3.9(c).

C. Attorney's Fees

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

The insurer shall pay the Applicant an attorney's fee in accordance with 11 N.Y.C.R.R. §65-4.6(d).

- 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 Erie

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

11/27/2020  
(Dated)

Michelle Murphy-Louden

**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:**  
608d7f23dcdceaf4e9d9cce3b0bff426

**Electronically Signed**

Your name: Michelle Murphy-Louden  
Signed on: 11/27/2020