

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health and Comfort Rx Inc
(Applicant)

- and -

State Farm Mutual Automobile Insurance
Company
(Respondent)

AAA Case No. 17-18-1109-8625

Applicant's File No. GS-702315

Insurer's Claim File No. 323687263

NAIC No. 25178

ARBITRATION AWARD

I, Mary Anne Theiss, 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: Claimant

1. Hearing(s) held on 11/19/2020
Declared closed by the arbitrator on 11/19/2020

Nicole Montrony, Esq. from Law Offices Of Gabriel & Shapiro, LLC. participated by telephone for the Applicant

Ann Henriksen, Esq. from Goldberg, Miller and Rubin, P.C. participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,499.78**, 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 the denial of a Terocin patch, 4%, based on a peer review of Stuart Stauber, M.D., indicating that it was not medically necessary, was justified.

The amount in question is \$2,499.78, for date of service April 30, 2018.

4. Findings, Conclusions, and Basis Therefor

The Claimant was in an automobile accident, on November 11, 2018. She was evaluated at A-Z Medical Care, P.C. Initially, she was seen at Long Island Hospital, where she had been taken via ambulance.

The Claimant had complaints of chest, neck, right arm, right wrist, and right shoulder pain. She had a possible fracture of the wrist. She was reported as being treated with analgesics.

One week after the accident, on April 17, 2018, the Claimant was evaluated by Dr. Delorme-Pagan, for sprain/strain to the cervical spine, right shoulder and contusion to the chest. MRI studies were ordered to rule out fracture of the right wrist. Recommendations included physical therapy and a prescription for ibuprofen, 600 mg.

The Claimant was prescribed Terocin patches, on April 30, 2018. There is no indication as to who the prescribing physician was.

A peer review was done, by Stuart Stauber, M.D., which generated a report dated June 5, 2018. He indicated there was no indication as to the necessity for the patches. The Claimant was receiving ibuprofen, 600 mg. The Claimant was also taking Motrin.

Dr. Stauber pointed out that the FDA indicates that Terocin or Lidocaine-type patches are indicated for pain associated with post-herpetic neuralgia. This was not the diagnosis in this case. There is no indication that the Claimant failed a course of over-the-counter analgesics, combined with a course of physical therapy prior to prescribing these patches. It was Dr. Stauber's opinion that there was no medical necessity for the patches.

Drora Hirsch, M.D., did a rebuttal, dated November 16, 2020. She went through the history of the Claimant and her complaints. She indicated that the Terocin, 4%, patches were medically necessary and prescribed with a reasonable degree of medical certainty. She indicated that the patient cannot take ibuprofen more often than one

dose every eight hours and, between doses, she can use the topical patch.

In response to Dr. Stauber she indicating that the patches are used for pain associated with post-herpetic neuralgia, that the patient complained of neck pain and stiffness radiating to the shoulders associated with tingling in the right upper extremity and right shoulder, wrist, arm pain, she indicated all of those findings were sufficient to warrant the use of Terocin in the patient's condition. She noted that Terocin is a combination of Lidocaine and menthol. It helps with minor aches and muscle spasms.

She also mentioned that Dr. Stauber noted the Claimant was afforded an insufficient trial of conservative care and that exam findings there was no findings to warrant consideration for formulary medication and the Claimant had not failed conservative over-the-counter NSAIDs. She indicated that failure of over-the-counter NSAIDs is not the only indication for prescribing the topical medication. It was prescribed for temporary relief.

I find, based on all of the evidence before me, I agree with Dr. Stauber, and the claim is denied, in its entirety.

I want to thank the parties for taking the time to prepare their case.

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 Madison

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

12/17/2020

(Dated)

Mary Anne Theiss

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
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Electronically Signed

Your name: Mary Anne Theiss
Signed on: 12/17/2020