

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

ISupply Medical Inc
(Applicant)

- and -

Maya Assurance Company
(Respondent)

AAA Case No. 17-20-1183-3952

Applicant's File No. AR20-12965

Insurer's Claim File No. 200140-01

NAIC No. 36030

ARBITRATION AWARD

I, Philip Wolf, 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 03/31/2021
Declared closed by the arbitrator on 03/31/2021

Alek Beynenson, Esq. from The Beynenson Law Firm, PC participated for the Applicant

Bryan Visnius, Esq. from De Martini & Yi, LLP participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,221.00**, 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

Assignor, a 26-year-old male, was the driver of a motor vehicle which was involved in an accident on February 21, 2020. As a result of the accident Assignor sustained injuries to his neck and left shoulder. Applicant is seeing reimbursement for the rental of a SAM unit during the period from July 13, 2020 through July 26, 2020. Respondent issued a timely denial predicated upon an August 21, 2020 peer review conducted by Marvin Winell, M.D. The issue in dispute is whether Respondent has established its lack of medical necessity defense.

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking a total of \$1,221.00 for the rental of a SAM unit during the period from July 13, 2020 through July 26, 2020. This award is rendered upon the oral arguments of both parties and upon the documentary evidence submitted by both parties. The documentary evidence submitted by the parties consists of the documents contained within the ADR Center for this matter as of April 30, 2021.

Applicant's Prima Facie Case

Assignor was the driver of a motor vehicle which was involved in an accident on December 21, 2020. As a result of the accident Assignor sustained injuries to his neck and left shoulder.

Assignor presented to Albert Ciancimino, M.D. on February 27, 2020 with complaints of neck pain, mid-back pain and left shoulder pain and tenderness. Physical exam yielded positive findings with respect to Assignor's cervical spine. Doctor Ciancimino recommended MRI scans, EMG/NCV testing, physical therapy, and a cervical collar.

Doctor Ciancimino performed a follow-up exam on March 12, 2020. At the time of the follow-up exam Assignor continued to complain of neck pain, mid-back pain and left shoulder pain. Physical exam yielded positive findings with respect to the cervical spine, thoracic spine, and left shoulders. Doctor Ciancimino recommended continued physical therapy.

On March 19, 2020, Dr. Ciancimino prescribed the use of a SAM unit. Applicant is seeking reimbursement for the rental of a SAM unit to Assignor during the period from July 13, 2020 to July 26, 2020.

After reviewing the evidence submitted by Applicant, I find that Applicant has submitted sufficient credible evidence to establish a prima facie case with respect to the rental of the SAM unit during the period from July 13, 2020 through July 26, 2020. *See, Viviane Etienne Med. Care v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 2015 NY Slip Op 04787 (2015).

Respondent's Peer Review Defense

Respondent issued a timely denial predicated upon an August 21, 2020 peer review conducted by Marvin Winell, M.D. Doctor Winell opined that the rental of a SAM unit was not medically necessary. In reaching his opinion, Dr. Winell does cite/reference to medical authority in compliance with the requirements set forth in *Jacob Nir, M.D. a/a/o Josaphat Etienne v. Allstate Ins. Co.*, 7 Misc. 3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005) and *CityWide Social Work & Psychological Services, P.L.L.C. a/a/o Tremayne Brow v. Travelers Indemnity Company*, 3 Misc. 3d 608, 777 N.Y.S.2d 241 (Civ. Ct. Kings Co. 2004).

Doctor Winell questioned the efficacy of a SAM unit. Doctor Winell further states that Assignor was already receiving physical therapy treatment. Doctor Winell further asserts that "the claimant does not demonstrate any subjective complaints or objective clinical evaluation findings to warrant durable medical equipment. There is no precise rationale

from the prescribing physician for consideration of DME items. There is no information noting that the claimant had been properly educated in the home use of any type of DME."

Applicant's Rebuttal

Applicant has submitted a rebuttal by Dr. Ciancimino. Doctor Ciancimino states that the SAM unit was prescribed in conjunction with office-based treatment for Assignor's neck and left shoulder injuries. Doctor Ciancimino states that a SAM unit is safe enough to use without supervision, however he and Applicant's technician provided oral instructions on the use of the SAM unit. Doctor Ciancimino states that his rationale for prescribing the SAM unit was in fact set forth in the prescription. "Ultrasound therapy has long been recognized as an effective form of conservative treatment and has been used as a form of office-based therapy for pain caused by soft tissue injuries due to MVA." Doctor Ciancimino further states that a SAM unit helps to reduce a patient's pain, increase mobility and speed recovery." "In this case, the patient had chronic tendinitis in left shoulder as well as left shoulder/rotator cuff injuries which is consistent with the above criteria required for the prescription of SAM device."

Determination of Medical Necessity

Where Respondent has presented sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Applicant, which must present its own evidence of medical necessity and/or rebuttal to Respondent's peer review. *See, A. Khodadadi Radiology, P.C. v. Central Mutual Fire Ins. Co.*, 2007 NY Slip Op 51342U, 16 Misc. 3d 131A (2nd Dept. 2007).

The prescription for the SAM unit sets forth that it was being prescribed to "reduce pain and accelerate the natural healing cascade for musculoskeletal related injuries." The prescription further states that the SAM unit increase oxygenated hemoglobin in the muscle and increased blood-flow to accelerate the recovery and reduction of pain for the associated injury." Accordingly, Dr. Ciancimino did provide a rationale for prescribing the SAM unit at the time it was prescribed.

Doctor Ciancimino further states that Assignor was given oral instruction in the proper use of the SAM unit.

Doctor Winell stated that "claimant does not demonstrate any subjective complaints or objective clinical evaluation findings to warrant durable medical equipment." However, Dr. Ciancimino also set forth specific exam findings that he opined warranted the prescription and use of the SAM unit. It is also noted that I find that Dr. Winell failed to set forth a standard documenting what findings, if any, would warrant the prescription of a SAM unit.

Based upon the foregoing, I find that Applicant has submitted sufficient credible evidence to rebut the peer review of Dr. Winell. I am persuaded by the opinion of Assignor's treating physician, Dr. Ciancimino, and his rationale for said opinion and find that Applicant has established the medical necessity for the rental of the SAM unit

during the period from July 13, 2020 through July 26, 2020. Accordingly, Applicant's claim is granted in its entirety.

DECISION: Based upon the foregoing, Applicant's claim is granted in its entirety. This award is in full disposition of all No-Fault benefit claims submitted to this Arbitrator.

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
	ISupply Medical Inc	07/13/20 - 07/26/20	\$1,221.00	Awarded: \$1,221.00
Total			\$1,221.00	Awarded: \$1,221.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/29/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest at the rate

of 2% per month, simple, and ending with the date of payment of the award. Respondent timely denied the subject bill and arbitration was not commenced within 30 days after receipt of denial. Accordingly, interest shall begin to accrue as **10/29/20**. See, LMK Psychological Services, P.C. v. State Farm Mut. Auto. Ins. Co., 2009 NY Slip Op 02481 (2009).

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 NYCRR 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 Suffolk

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

04/30/2021
(Dated)

Philip Wolf

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:
f3ea0146eae3ae1b2fa7aa1fa99f438f

Electronically Signed

Your name: Philip Wolf
Signed on: 04/30/2021