

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ozone Park Supply Inc.
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-21-1217-2620

Applicant's File No. N/A

Insurer's Claim File No. 635967

NAIC No. Self-Insured

ARBITRATION AWARD

I, Hersh Jakubowitz, 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 02/23/2022
Declared closed by the arbitrator on 02/23/2022

Jeffrey Datikashvii from The Sigalov Firm PLLC participated for the Applicant

Tracy Bader Pollak from Marshall & Marshall, Esqs. participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,346.76**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The Parties stipulated that Applicant had met its prima facie burden of proof, that Respondent's denials were interposed in a timely fashion and the claim amount adheres to the fee schedule.

3. Summary of Issues in Dispute

Applicant seeks reimbursement, along with interest and counsel fees, under the No-Fault Regulations, for the costs associated with the following prescriptions: Lumbar Sacral Orthosis (LSO) and Cervical Traction Unit with pump (CTU) provided to EIP on November 22, 2020 in connection with injuries allegedly sustained by EIP in a motor

vehicle accident on July 30, 2020. The payment, for the LSO and CTU was denied, following a review of the medical records and Peer Review by Dr. Robert Sohn, D.C., at Respondent's behest, as not medically necessary. The denial was timely. This decision, awarding Applicant's claim, is based upon the written submissions of counsel for the respective parties contained within the electronic case file maintained by the American Arbitration Association as well as oral argument at the hearing conducted on February 23, 2022.

4. Findings, Conclusions, and Basis Therefor

History

The dispute arises from a motor vehicle accident on July 30, 2020, in which the EIP, a then 55-year-old female was a pedestrian and sustained multiple injuries. EIP was taken to St. Barnabus Hospital where she x-rayed, treated and released.

On August 10, 2020, the EIP went to the office of Dr. Thomasina Striano, D.C., for evaluation and care. The EIP complained of radiating neck pain and radiating back pain. Examination revealed spasm, tenderness, decreased range of motion and numerous positive orthopedic tests. Dr. Striano recommended that EIP commence chiropractic manipulative and trigger point therapy. EIP commenced a course of chiropractic manipulation, physical therapy and acupuncture treatments. Subsequently, Dr. Striano prescribed and the EIP received on November 22, 2020, an LSO and CTU, provided by Applicant and it is the reimbursement of the LSO and CTU that is the issue in this proceeding.

Prima Facie

The Applicant established its prima facie case by proof that the prescribed statutory billing forms had been received and that payment of no-fault benefits was not forthcoming. (See, New York & Presbyt. Hosp. v. Countrywide Ins. Co., 44 A.D.3d 729 [N.Y. App. Div. 2d Dep't 2007]). Proof of the receipt of the Applicant's billing is implicit, in the timely denial issued by the Respondent. The Respondents obligation is to now demonstrate the validity of its denial.

Denial

Respondent timely denied the LSO and CTU provided to the EIP on the grounds of lack of medical necessity predicated upon the peer review report by Robert A. Sohn, D.C. dated January 21, 2021. The peer reports list the medical records reviewed and asserts that the "LSO" supplied by Applicant was not medically necessary. Dr. Sohn's reasoning is that the LSO restricts movement, and the goal of chiropractic therapy is to restore movement. There was no indication at the initial examination that CTU to be part of a home treatment. In if CTU becomes a part of a home treatment, a trial of CTU with the Applicant administering said therapy should have been attempted. In addition, the efficacy of home traction has not been proven.

Analysis

I find that the peer review report sets forth a cogent medical rationale in support of its contention that the LSO was not medically necessary and is sufficient to meet Respondent's burden of proof. Dr. Sohn sets forth evidence of a possible deviation from "generally accepted medical" standards and his analysis are supported by citation to medical authority. Thereafter, the burden of proof/persuasion shifts back to Applicant to present competent medical proof as to the medical necessity for the LSO, by a preponderance of the credible evidence. See, *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11 Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual WL 1989432 (App. Term 2d & 11 Dists. 7/3/08).

Rebuttal

Dr. Thomasina Striano, D.C., in her rebuttal, states that the LSO allows sufficient movement to give support but not complete restriction. She also cites numerous articles which prove that the LSO is beneficial to the injuries suffered by the EIP. She further argues that the "LSO" allows for flexibility in bending and protects the body from further injury. AS to the CTU, this DME does not require supervision or need for a test period as it is safe. The rebuttal Supplies adequate medical references

Analysis

Where, as here, there are dueling reports from physicians each raising a factual basis and medical rationale for respective opinions there becomes a question of fact for me to resolve regarding causation and/or medical necessity. See *State Farm Mut. Auto. Ins. Co. v. Stack*, 55 A.D.3d 594, 869 N.Y.S.2d 536 (2nd Dept. 2008); *Radiology Today PC v. Travelers Ins.*, 39 Misc.3d 146(A) (App. Term 2nd Dept. May 14, 2013); *Westcan Chiropractic PC v. Elco Admin. Services*, 2018 NY Slip Op. 51045(U) (App. Term 2nd Dept. June 28, 2018). As the trier of fact, I am free to accept or reject opinions on credibility grounds. See *Webster Ave. Pavilion PC v. Allstate Ins. Co.*, 42 Misc.3d 148(A) (App. Term 1st Dept. March 19, 2014); *AP Orthopedic v. Allstate Ins. Co.*, 49 Misc.3d 144(A) (App. Term 2nd Dept. Nov. 12, 2015.)

I find the Rebuttal of Dr. Striano, the treating chiropractor more persuasive than the peer of Dr. Sohn.

Accordingly, I find that the Applicant's claim is awarded in its entirety.

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
	Ozone Park Supply Inc.	11/22/20 - 11/22/20	\$1,346.76	Awarded: \$1,346.76
Total			\$1,346.76	Awarded: \$1,346.76

B. The insurer shall also compute and pay the applicant interest set forth below. 08/31/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11

NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney fee, in accordance with newly promulgated 11 NYCRR 65-4(d). After calculating the sum total of the first party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of the sum total, subject to no minimum and a maximum of \$1,360.00.

- 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 Nassau

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

02/28/2022
(Dated)

Hersh Jakubowitz

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:

6064f6de2a95b2607ee3b1a3d6db1ded

Electronically Signed

Your name: Hersh Jakubowitz
Signed on: 02/28/2022