

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Recovery Med Inc.
(Applicant)

- and -

Esurance Insurance Company
(Respondent)

AAA Case No.	17-23-1297-0046
Applicant's File No.	2949967
Insurer's Claim File No.	230052895-001
NAIC No.	25712

ARBITRATION AWARD

I, Joshua Adler, 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 10/03/2023
Declared closed by the arbitrator on 10/03/2023

J. Buscarino from Israel Purdy, LLP participated virtually for the Applicant

K. Stulgatis from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$994.00**, 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

The EIP claimed injuries arising from a 1/19/23 MVA.

Applicant-supplier seeks payment for providing the EIP with cold compression therapy equipment, prescribed by Nurse Practitioner Satchell-Lee Tyrell on the day of the MVA, 1/19/23.

Respondent denied the claim based on a peer review by S. Patel, MD, dated 3/17/23.

4. Findings, Conclusions, and Basis Therefor

EIP: male, born August 1993, initials J.J.

I have reviewed the MODRIA file maintained by the AAA. The findings set forth below are based on documents in MODRIA and arguments made at the hearing.

The EIP claimed injuries arising from a 1/19/23 MVA.

Applicant-supplier seeks payment for providing the EIP with cold compression therapy equipment, prescribed by Nurse Practitioner Satchell-Lee Tyrell on the day of the MVA, 1/19/23.

Respondent denied the claim based on a peer review by S. Patel, MD, dated 3/17/23.

In opposition, applicant relies on the medical record as well as a rebuttal by J. Perez, MD, dated 8/19/23. Dr. Perez appears not to have been involved in the EIP's treatment.

The services rendered are presumptively medically necessary, as the applicant established its prima facie entitlement to payment by submitting the claim, setting forth the fact and the amount of loss sustained, and showing that payment was overdue (see e.g., Mary Immaculate Hospital v Allstate Insurance Co., 5 AD3d 742 [2d Dept. 2004]). Indeed, in no-fault matters, "medical necessity is established in the first instance by proof of submission of the claim form" (All County Open MRI v Travelers Insurance Co., 11 Misc3d 131 [A], 815 NYS2d 493 [App. Term 2006]). Nevertheless, as discussed below, I find that respondent's peer reviewer rebutted the presumption of medical necessity and that - when the burden to demonstrate medical necessity shifted back to the applicant - it failed to satisfy such burden.

The peer reviewer aptly discussed, inter alia, the underlying medical record, including the initial examination report of 1/19/23. The peer noted that the MVA - which allegedly occurred as EIP pulled out of a parking spot (see police report) - caused no LOC, nor was there an ER visit (see peer at 3).

At the 1/19/23 examination, EIP complained of shoulder, back, and neck pain. The examination report noted positive left shoulder impingement, full shoulder ROM with pain, and specifically circled "no edema" with respect to extremities. The examination report did not include any notation for cervical spine exam. Lumbar examination noted full ROM "with pain," positive SLR, and mild/moderate muscle tenderness and spasm on palpation. Muscle strength and sensation were normal.

As aptly noted in the peer review, at that initial examination - taking place on the same day as the MVA - the treating NP recommended PT, chiropractic care, acupuncture, consults with neurology, psychology, orthopedic, and pain management, ROM and muscle testing, MRIs, multiple DME (including the at-issue cold compression therapy equipment), naprosyn and lidocaine ointment (peer at 3; see also 1/19/23 examination report under heading "Treatment Plan").

Although the peer reviewer acknowledged that cold compression therapy is used for swelling, inflammation, and pain associated with sprain and muscle pull, he suggested it is "most often used in post-surgical patients or patients with lymphatic or vascular insufficiency" and edema for treatment immediately after surgery (peer at 4). The peer opined that that EIP had not undergone "orthopedic procedure or post-traumatic wounds which would support the medical necessity of the requested cold compression therapy device" (peer at 4).

I find that respondent's proffering of the peer review satisfied its prima facie burden of demonstrating lack of medical necessity, as the peer reviewer set forth a factual basis and medical rationale for his conclusion that the subject equipment was not medically necessary (see Active Imaging, PC v Progressive Northeastern Ins. Co., 2010 NY Slip Op. 51842 [U][App. Term, 2d Dept. 2010]). When the burden of proof then shifted to applicant to demonstrate medical necessity, it did not do so. First, I am not persuaded that the rebuttal accurately addressed the underlying record. For example, in the rebuttal, Dr. Perez advised that, per the letter of medical necessity, the cold compression device was prescribed "for the lower back to help reduce recovery time by reducing edema, swelling, and pain" (rebuttal at paragraph 6). However, the "Cold Compression Prescription and Certificate of Medical Necessity" signed by NP Satchell-Lee checked off that that the Wrap was for back and shoulder. Moreover, as mentioned above, the underlying examination report noted "no edema" with respect to extremities, with no other reference in the underlying examination report to edema. Furthermore, it does not appear that the rebuttal adequately addressed the sheer amount of treatment EIP was prescribed at the initial visit which (a) took place on the same day as the MVA and (b) without ER visit - topics alluded to on page 3 of the peer review.

On the record before me, I sustain the denial.

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 NY

SS :

County of Nassau

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

10/23/2023

(Dated)

Joshua Adler

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:
abc39985d2a1d82fd1610cdf7e8474f9

Electronically Signed

Your name: Joshua Adler
Signed on: 10/23/2023