

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

OrthoMotion Rehab DME Inc., LLC (Applicant)	AAA Case No.	17-23-1284-3924
- and -	Applicant's File No.	GM22-521317, GM22-525654, GM22-525655, GM22-529077
Geico Insurance Company (Respondent)	Insurer's Claim File No.	8707188570000002
	NAIC No.	35882

**ARBITRATION AWARD**

I, Diane Flood Taylor, 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 10/19/2023  
Declared closed by the arbitrator on 10/19/2023

Helen Cohen from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Jaime Dranch from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,296.04**, 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 Applicant is entitled to recover for durable medical equipment (DME), which the Respondent has denied as medically unnecessary predicated upon a peer review.

Applicant is seeking reimbursement in the amount of \$2,296.04 for rental of DME in connection with the management of injuries sustained by the Assignor, MD, a then 67-year-old eligible injured person who, on 6/25/22, was involved in a collision with the insured motor vehicle.

Respondent denied reimbursement for the pharmaceuticals at issue premised on a peer review conducted by Ron Amidror, DC, dated 10/6/22.

The decision below is based upon a review of the documents that have been submitted electronically, as well as the arguments of counsel and/or representatives appearing via video conference on behalf of the parties.

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

In dispute in this Arbitration are four (4) bills for rental of a Vasco-Therm furnished between 8/30/22 and 9/26/22.

Respondent raised no issue or argument concerning Applicant's submission of proof of claim.

Applicant establishes its prima facie entitlement to reimbursement with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue. See Insurance Law § 5106(a); Viviane Etienne Med. Care v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015); Mary Immaculate Hosp. v. Allstate Ins. Co., 5 A.D. 3d 742, 774 N.Y.S. 2d 564 (2nd Dept., 2004).

The burden shifts to the Respondent to demonstrate a lack of medical necessity for the disputed services. See, Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc 3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. See, Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co., 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); King's Med. Supply Inc. v. Country Wide Ins. Co., 5 Misc 3d 767, 783 N.Y.S. 2d 448. The medical rationale should be supported by evidence of the generally accepted medical professional practice. See, Nir v. Allstate Ins. Co., 7 Misc. 3d 544 (2005).

#### **Peer Review**

Respondent timely denied reimbursement for the services at issue premised upon a peer review conducted on its behalf by Ron Amidror, DC, who wrote in a report dated 9/20/22 in support of the recommendation against reimbursement, "As evident from the submitted notes and exam, the patient already receives superficial hot/cold therapy at every therapy session. Also, the patient receives soft tissue therapy. There is no need for additional equipment since its already given, especially with the fact that the patient can receive a cheaper, easier to operate (device) in any pharmacy."

Dr. Amidror emphasized, "since the patient already received superficial hot/cold therapies and with soft tissue, I can conclude that there was no medical necessity to prescribe this auxiliary equipment."

The above referenced peer review sets forth a factual basis and medical rationale in support of Respondent's denial based on a lack of medical necessity for the disputed procedure. If the insurer presents sufficient evidence establishing a lack of medical necessity, then the burden shifts back to the Applicant to present its own evidence of medical necessity. See, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131A (2006). In order for the Applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the Respondent's evidence. See, Yklik, Inc. v. Geico Ins. Co., 28 Misc. 3d 133A (2010).

### **Rebuttal**

Arun Agrawal, MD, authored a rebuttal dated 11/22/22 in which he argued, in relevant part, "the Vascutherm device was prescribed to serve as a gentle reminder to avoid excessive motion and may help to encourage proper body mechanics."

Dr. Agrawal indicated "The Vascutherm therapy system delivers a totally unique and proprietary thermal compression therapy solution in one easily transportable device."

Finally, Dr. Agrawal argued that the heat, the cold and the compression were all important elements in healing the patient's injuries.

Pursuant to 11 NYCRR 65-4.5 (o) (Regulation 68-D) the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. Arbitrators sit in equity and have the powers to enforce the spirit and intent of the No-fault law and regulations. See Bd. of Education, et. al. v. Bellmore-Merrick, 39 N.Y. 2d. 167 (1976).

"Although an arbitration panel may not overtly disregard the law, arbitrators are not strictly tethered to substantive and procedural laws and may do justice as they see it, provided that they do not violate a strong public policy, do not exceed a specifically enumerated limitation on their power and their decisions are not totally irrational [citations omitted]." Matter of Solow Building Co., LLC v. Morgan Guarantee Trust Co. of New York, 6 A.D.3d 356, 356, 776 N.Y.S.2d 547, 548 (1st Dept. 2004).

### **Findings**

In careful consideration of the credible evidence submitted, and in weighing the opinions of the doctors as expressed in the peer review of Dr. Amidror and the rebuttal of Dr. Agrawal, I find Dr. Amidror's arguments more persuasive as to the lack of medical necessity for the Vascutherm device at issue.

The objective evidence reflects that the patient received chiropractic care and physical therapy, and, in both settings, patient received cryotherapy and hot therapy, if/when needed.

I find Respondent proved the lack of medical necessity for the device at issue.

Accordingly, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Applicant as delineated above. Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No-Fault benefits presently before 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 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 Westchester

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

11/06/2023  
(Dated)

Diane Flood Taylor

### **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:**

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### **Electronically Signed**

Your name: Diane Flood Taylor  
Signed on: 11/06/2023