

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Right Choice Supply, Inc.
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-22-1271-2949

Applicant's File No. LIP-22718

Insurer's Claim File No. 1109272-01

NAIC No. 16616

ARBITRATION AWARD

I, Ann Lorraine Russo, 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: patient

1. Hearing(s) held on 11/16/2023
Declared closed by the arbitrator on 11/16/2023

Lee Ann Trupia, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

Janna El Jamal, Esq. from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,597.05**, 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 issue in dispute in this case is the nonpayment by the respondent for medical equipment services provided to the twenty-six-year-old male patient from 5/13/2022 through 6/27/2022 for a motor vehicle accident on 2/21/2022. The respondent issued a timely denial based upon the examination under oath of the patient on 8/19/2022 and biomechanical engineer report by Omid Komari, Ph.D. dated 9/8/2022. The respondent provided that there is a "...lack of coverage, as it has been established the fact or founded belief that the claimant's treated condition was unrelated to the motor vehicle

accident and are a result of an intentionally staged occurrence. In addition, the entire claim is denied based on a lack of causation as opinion based on the biomechanical science expert of Omid Komari, Ph.D. dated 9/8/2022."

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

The issue in dispute in this case is the nonpayment by the respondent for medical equipment services provided to the twenty-six-year-old male patient from 5/13/2022 through 6/27/2022 for a motor vehicle accident on 2/21/2022. The respondent issued a timely denial based upon the examination under oath of the patient on 8/19/2022 and biomechanical engineer report by Omid Komari, Ph.D. dated 9/8/2022. The respondent provided that there is a "...lack of coverage, as it has been established the fact or founded belief that the claimant's treated condition was unrelated to the motor vehicle accident and are a result of an intentionally staged occurrence. In addition, the entire claim is denied based on a lack of causation as opinion based on the biomechanical science expert of Omid Komari, Ph.D. dated 9/8/2022.". The applicant provided that the denial is late in this case. The denial is late in this case. The denial is dated 9/20/2022 for a bill received on 7/5/2022. The denial provided that the final verification was received on 8/19/2022. The denial is dated 9/20/022 which is in excess of the statutory thirty-day time frame for the respondent to pay or deny the applicant's bill in this case. See 11 NYCRR Section 65-3.8. It was further noted that this arbitrator issued a prior decision in favor of another applicant based upon the respondent denial for coverage. See American Arbitration Association case number 17 22 1262 0048. The amount in dispute is \$2,597.05 for the medical equipment services performed in this case.

A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof either that the defendant had failed to pay or deny the claim within the requisite 30-day period, or that the defendant had issued a timely denial of claim that was conclusory, vague or without merit as a matter of law. See Insurance Law Section 5106(a); Ave T MPC Corp. v. Auto One Ins. Co., 32 Misc.3d 128(A), 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 51292(U), 2011 WL 2712964 (App. Term 2d, 11th & 13th Dists. July 5, 2011); Westchester Medical Center v. Nationwide Mut. Ins. Co., 78 AD3d 1168, 911 N.Y.S.2d 907 (2nd Dept. 2010) and New York & Presbyt. Hosp. v. Allstate Ins. Co., 31 AD3d 512 (2006). In the case at hand, the respondent issued a timely denial based upon the examination under oath of the patient and biomechanical engineer report challenging the causal relationship and medical necessity of the services in dispute. The denial is timely and promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimers are predicated in this case. As a result, the respondent has timely denied the applicant's claims thereby preserving its defense based upon the casual relationship and medical necessity for the medical equipment services.

The medical records and documentation provided the patient's injuries sustained in the motor vehicle accident on 2/21/2022, patient's medical history and course of medical treatment. The patient's no-fault application provided injury to the left shoulder. The patient's no-fault application, medical records and documentation support the patient's left shoulder injury was caused by the motor vehicle accident on 2/21/2022 and the treatment for the left shoulder including the surgery on 5/13/2022 and surgical anesthesia services was medically necessary in this case. In addition, the patient appeared and testified at an examination under oath on 8/19/2022 that further supports the manner in which the motor vehicle accident occurred on 2/21/2022, injuries sustained by the patient and course of medical treatment, including to the left shoulder. The patient testified about the details of the accident as a heavy collision (See examination under oath of the patient on 8/19/2022 page 12 lines 10 through 12); the cause of injury to the left shoulder (See examination under oath of the patient on 8/19/2022 page 14 lines 8 through 16). The patient's testimony at the examination under oath is consistent and supported by the medical documentation in this case. The medical reports sufficiently incorporate the surgical and associated services in the patient's course of medical treatment and the way the services affected the patient's status and recovery. There are medical reports that provide the surgical and associated services that affected the patient's status and well-being.

The respondent's denial further provided that the services were denied based upon a biomechanical engineer report. The denial specifically provided that the injuries did not arise out of an insured event and based on a lack of causation as opinion based upon the biomechanical science expert report of Omid Komari, Ph.D. There is no evidence that the biomechanical engineer that authored the report is a medical doctor of any kind. The report by Omid Komari, Ph.D. identifies himself as an engineer. His medical opinion as to the type of injury which could have been caused by an accident is of absolutely no probative value. In addition, there was no indication Dr. Komari ever viewed the vehicle, took measurements, or analyzed pertinent facts to this accident. The report does not establish that the claimant's injuries were not casually related to the loss. Specifically, I find that the report relies upon conjecture and innuendo to reach the conclusion that within a reasonable degree of biomechanical certainty the loads and mechanisms required to cause acute traumatic injuries, except for minor strains or sprains, were not present. This report is insufficient to establish a lack of causality. Dr. Komari does not state that there is no definitive lack of causality between the loss and the injuries. Dr. Komari hedges his conclusion with statements like "there does not appear" when indicating this accident appears not to have caused the injury. Additionally, there is no corresponding report from a medical doctor provided that would correlate these findings to the claimant's condition. In addition, the patient's examination under oath testified as to the details of the motor vehicle accident and cause of injuries, including the left shoulder. The biomechanical engineer report is contrary and inconsistent with the patient's testimony. The patient's testimony described a substantial force and impact of the left shoulder causing the left shoulder injuries for the patient without any prior injury to the left shoulder in this case. The biomechanical report does not support that the injuries did not arise out of an insured event and based

on a lack of causation as opinion based upon the biomechanical science expert report. The report is not persuasive in this case. Consequently, the medical equipment services provided by applicant for the patient in this case are granted.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that the medical equipment was medically necessary and casually related to the motor vehicle accident on 2/21/2022 in this case.

Accordingly, the applicant's claim is granted.

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
	Right Choice Supply, Inc.	05/13/22 - 05/13/22	\$111.07	Awarded: \$111.07
	Right Choice Supply, Inc.	05/17/22 - 06/06/22	\$654.99	Awarded: \$654.99
	Right Choice Supply, Inc.	05/17/22 - 06/06/22	\$1,176.00	Awarded: \$1,176.00
	Right Choice Supply, Inc.	06/07/22 - 06/27/22	\$654.99	Awarded: \$654.99
Total			\$2,597.05	Awarded: \$2,597.05

- B. The insurer shall also compute and pay the applicant interest set forth below. 10/20/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay the applicant interest from the date of the arbitration filing on 10/20/2022.

C. Attorney's Fees

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

The respondent shall pay the applicant attorney fees pursuant to 11 NYCRR Section 65-4.6.

- 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 NY
SS :
County of Nassau

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

11/24/2023
(Dated)

Ann Lorraine Russo

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:
ed849b0db6e06ef2d595e180e0094177

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 11/24/2023