

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rockville Rx, Inc.
(Applicant)

- and -

MVAIC
(Respondent)

AAA Case No. 17-22-1262-9809

Applicant's File No. RB-247-274939

Insurer's Claim File No. 669185

NAIC No. Self-Insured

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 11/20/2023
Declared closed by the arbitrator on 11/20/2023

Elyse Ulino, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Jeffrey Kadushin, Esq. from Marshall & Marshall, Esqs. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,014.83**, 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 provided on 12/31/2021 for lumbosacral support, lumbar cushion, cervical pillow, bed board, cervical collar, thermophore and hot/cold pack and 2/2/2022 for a wrist support, massager, infra-red heat lamp and TENs unit by the applicant for the sixty-two-year-old male patient as a result of a motor vehicle accident on 12/15/2021. The respondent issued timely denials based upon the peer review report by Dr. Kenneth Marici for the medical equipment in this case.

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 provided on 12/31/2021 for lumbosacral support, lumbar cushion, cervical pillow, bed board, cervical collar, thermophore and hot/cold pack and 2/2/2022 for a wrist support, massager, infra-red heat lamp and TENs unit by the applicant for the sixty-two-year-old male patient as a result of a motor vehicle accident on 12/15/2021. The respondent issued timely denials based upon the peer review report by Dr. Kenneth Marici for the medical equipment in this case. The applicant submitted a late rebuttal in violation of this forum's rocket docket procedures and rules. The late submissions violate the rocket docket rules and procedures of the arbitration forum and late documentation is precluded in this case. The submission of late documentation by parties is prejudicial to the respondent and would reward the applicant's tardy behavior. The late documentation is in violation of this forum's rocket docket procedures and rules. The late submissions violate the rocket docket rules and procedures of the arbitration forum and late documentation is precluded in this case. The amount in dispute is \$2,014.83 for the medical equipment 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 peer review report challenging the medical necessity of the medical equipment 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 medical necessity of the medical equipment.

The peer review report by Dr. Kenneth Marici is persuasive for the lumbar cushion, bed board, cervical collar and infra-red heat lamp in this case, but the peer review report is not persuasive for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case. The peer reviewer possessed a list of medical records and documents and did not sufficiently implement or discuss the events and findings contained in the reports for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs. Dr. Marici did not

sufficiently discuss the positive clinical findings and events contained in the medical reports upon which the medical rational and determination to provide the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit was based by the patient's treating medical providers for the patient. Dr. Marici does not adequately discuss the patient's complaints and treatment was not sufficiently implemented and discussed in the peer review report for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case. The peer reviewer did not sufficiently implement and discuss the patient's treatment, status and condition for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case. The peer reviewer does not sufficiently incorporate the patient's medical history, clinical events, and objective findings in support of the analysis, recommendations and conclusions provided in the peer review report for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case.

The peer reviewer noted the significant clinical findings and events for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit but does not implement and discuss the significance of these findings and effect on the patient's course of medical treatment. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the applicant's medical records for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the medical records for the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit in this case. The medical records provide the manner in which the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit was warranted for the specific patient's and circumstances in this case. The peer review report is inconsistent with the medical records and reports for these specific items for this specific patient in the circumstances of the motor vehicle accident on 12/15/2021 in this case. However, Dr. Marici does note and implement the lack of sufficient clinical findings and events for the bed board, cervical collar, lumbar cushion and infra-red heat lamp in support of the denial for the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. Dr. Marici noted the lack of any significant complaints, findings, and clinical events to support the prescriptions for the cervical collar, bed board, lumbar cushion and infra-red heat lamp in support of the denial of the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. The peer review report by Dr. Marici is not persuasive for the denial of the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support massager and TENs unit but is persuasive for the denial of the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case.

The peer review report does support the denial of the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. The applicant has not submitted any timely sufficient and persuasive medical records and reports in support of the cervical collar, bed board, lumbar cushion and infra-red heat lamp provided to the patient in this case. The applicant has not submitted sufficient documentation in support of the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. The applicant's medical documentation does not support the prescriptions for the cervical collar, bed

board, lumbar cushion and infra-red heat lamp in dispute in this case. The applicant's medical records do not provide sufficient clinical events and findings to warrant the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. The applicant's medical reports did not provide sufficient persistent deficits and findings to warrant the performance of the cervical collar, bed board, lumbar cushion and infra-red heat lamp for this specific sixty-two-year-old male patient in this case. The applicant has not submitted any sufficient medical reports with the patient and the impact of the cervical collar, bed board, lumbar cushion and infra-red heat lamp. The applicant's reports do not provide significant and persistent patient complaints and objective findings in support of the cervical collar, bed board, lumbar cushion and infra-red heat lamp provided to the patient in dispute in this case. The applicant has not submitted sufficient medical opposition to the events, findings and conclusions provided in the respondent's peer review report for the cervical collar, bed board, lumbar cushion and infra-red heat lamp in this case. The applicant has not submitted sufficient medical opposition to the events, findings and conclusions provided in the respondent's peer review by Dr. Marici for the cervical collar, lumbar cushion, lumbar cushion and infra-red heat lamp in this case. Consequently, the cervical collar, bed board, lumbar cushion and infra-red heat lamp provided to the patient by the applicant are denied but the lumbosacral support, cervical pillow, thermophore, hot/cold pack, wrist support, massager and TENs unit are granted in this case.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that a portion of the medical equipment was medically necessary and warranted in this case.

Accordingly, the applicant's claim is partially 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
	Rockville Rx, Inc.	12/31/21 - 12/31/21	\$1,034.34	Awarded: \$361.73
	Rockville Rx, Inc.	02/02/22 - 02/02/22	\$980.49	Awarded: \$824.49
Total			\$2,014.83	Awarded: \$1,186.22

B. The insurer shall also compute and pay the applicant interest set forth below. 08/18/2022 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 8/18/2022.

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.

11/27/2023
(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:
6a168a2b9a25b29c77215a3e52db5be3

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 11/27/2023