

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ideal Care Pharmacy Inc.  
(Applicant)

- and -

Avis Budget Group  
(Respondent)

AAA Case No. 17-22-1258-4714

Applicant's File No. 111123

Insurer's Claim File No. 228006568-001

NAIC No. Self-Insured

**ARBITRATION AWARD**

I, Debbie Kotin Insdorf, 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 11/13/2023  
Declared closed by the arbitrator on 11/13/2023

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Lochlan McDonnell, Esq. from Rubin, Fiorella, Friedman & Mercante LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,984.94**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The billed amount is in accordance with the fee schedule.

3. Summary of Issues in Dispute

The Applicant is seeking reimbursement for prescription medication dispensed to Assignor JC on 4/19/22, following a motor vehicle accident on 2/21/22. The Respondent issued a timely denial based on a peer review by Dr. Amit Khaneja on 6/14/22.

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

The Applicant's claim is for \$1,984.94 for Somnicin capsules, Duloxetine, Sumatriptan tablets and Versapro cream dispensed on 4/19/22.

The Respondent issued a timely denial based on a peer review.

On 2/21/22, the twenty seven year old Assignor was involved in a motor vehicle accident. There wasn't an emergency room visit.

The Applicant did not provide any medical reports. There were prescriptions written by Andrew Patrick for Sumatriptan cream, Somnicin capsules and Duloxetine capsules.

The Applicant's delivery slip dated 4/24/22 notes the Assignor received and acknowledged the Sumatriptan cream, Somnicin capsules and Duloxetine capsules.

There is no indication the Versapro cream billed at \$152.00 utilizing code 38779-2529-03 was prescribed or supplied by the Applicant.

On 6/14/22, Dr. Amit Khaneja reviewed documents made available to him to determine the medical necessity for the prescription medication supplied to the Assignor. He did not find the Somnicin, Duloxetine, Sumatriptan or Versapro cream medically necessary.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co., 196 Misc.2d 801, 766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply

the facts of the case and only then may she properly conclude the services in issue were not medically necessary due to the provider's violation of the generally accepted medical standards.

Dr. Khaneja noted that topical analgesics are primarily recommended for neuropathic pain when antidepressants and anticonvulsants failed.

There was only one topical analgesic dispensed. As noted above, there was no prescription for the Versapro and no acknowledgment of receipt by the Assignor.

With regard to the Duloxetine, Dr. Khaneja noted it is recommended as a first line treatment for neuropathic pain.

The only medical information reported by Dr. Khaneja is that the Assignor suffered neck, low back, left shoulder and left knee pain. There was no medical report listed in the documents reviewed by the peer reviewer. He noted the Assignor was prescribed the medication in issue.

With respect to Sumatriptan, Dr. Khaneja wrote, "In this case, documentation does not definitively diagnose the claimant with migraine headaches. Clinical exam determined trauma to the cervical spine from a motor vehicle accident. Therefore, this pain is cervicogenic and not a result of chronic migraines. Therefore, Sumatriptan was prescribed not according to the medical standard of care."

Dr. Khaneja noted that Somnicin is a nutritional supplement. It is suggested for treatments of insomnia, anxiety, and depression. He wrote it is not shown to have meaningful effect on the treatment of conditions and not according to the medical standard of care.

In the instant case, the conclusion of the peer reviewer upon which the denial of the Duloxetine was based was not supported by a sufficient factual foundation and medical rationale to warrant rejection of Applicant's claim and accordingly, was insufficient to support the defense of medical necessity.

In the instant case, the conclusion of the peer reviewer upon which the denial of the Sumatriptan and Somnicin was based was supported by a sufficient factual foundation and medical rationale to warrant rejection of Applicant's claim and accordingly, was sufficient to support the defense of medical necessity.

The burden now shifts to applicant to refute Respondent's evidence. See, Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 2008 NY Slip Op 50347 (U) (App Term 2d Dept., Feb. 21, 2008); A. Khodadadi Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 16 Misc.3d 131,(A), 841 N.Y.S.2d 824 (Table), 2007 NY Slip Op 51342 (U), 2007 WL 1989432 (App. Term 2d & 11<sup>th</sup> Dists. July 3, 2007).

There was no rebuttal to counter the peer review.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I find that Respondent has met its burden of lack of medical necessity for the Sumatriptan and Somnicin.

Accordingly, the Applicant is awarded \$476.12 for the Duloxetine.

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
	Ideal Care Pharmacy Inc.	04/19/22 - 04/19/22	\$1,984.94	Awarded: \$476.12
Total			\$1,984.94	Awarded: \$476.12

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/16/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after Apr.5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element until such action is taken. 11 NYCRR 65-3.9(c). In accordance with 11 NYCRR 65-3.9 (c), interest shall be paid on the claim (s), totaling \$476.12 from 7/16/22, the date the arbitration was commenced.

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). The insurer shall pay the applicant an attorney's fee, in accordance with 65-4.6(d). This amendment takes into account that there is an attorney fee of 20% of benefits plus interest with no minimum fee and a maximum attorney fee of \$1360.00.

- 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 NY

SS :

County of New York

I, Debbie Kotin Insdorf, 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)

Debbie Kotin Insdorf

### **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:**  
d3137d21d57b8f45a23a68043eb6e3bd

### Electronically Signed

Your name: Debbie Kotin Insdorf  
Signed on: 11/27/2023