

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NetRx Inc.
(Applicant)

- and -

Avis Budget Group
(Respondent)

AAA Case No. 17-23-1294-7648

Applicant's File No. 135100

Insurer's Claim File No. 238001910-001

NAIC No. Self-Insured

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 11/30/2023
Declared closed by the arbitrator on 11/30/2023

Edilaine D'Arce from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Ivanna Chiowe from Avis Budget Group participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,087.63**, 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 \$4,087.63 for DME in connection with the management of injuries sustained by the Assignor, AM, a then 39-year-old eligible injured person who, on 1/5/23, was involved in a collision with the insured motor vehicle.

Respondent denied reimbursement for the DME at issue premised on a peer review conducted by Shruti Patel, MD, dated 3/17/23.

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 two (2) bills: one for rental of a SAM unit furnished between 1/26/23 and 2/22/23 and the other for rental of a cold compression unit between 1/26/23 and 2/22/23 and purchase of a shoulder orthosis on 1/26/23.

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 Shruti Patel, MD, who wrote in a report dated 3/17/23 in support of the recommendation against reimbursement, "Based on the medical records provided, I come to the conclusion that SAM Unit (Coupling Patches Included) x28 provided on the dates of 01/26/2023-02/22/2023 by Netrx Inc was not medically necessary. Based on the medical records provided, I come to the conclusion that Shoulder Orthosis,

Acromio/Clavicular (Canvas and Webbing Type), Prefabricated, Off-the-Shelf provided on the date of 01/26/2023 and Cold Compression Unit x28 provided on the dates of 01/26/2023-02/22/2023 by Netrx Inc were not medically necessary."

Dr. Patel elaborated with regard to the shoulder orthosis, "Shoulder pain often requires multimodal treatment. Standard of care is to continue activity as tolerated, physical therapy and pharmacologic management with NSAID. If symptoms persist, steroid injection can be considered in some cases. The use of orthosis is often not recommended as it has shown no benefit as evidenced by study. Shoulder orthosis is not recommended as a primary treatment except following dislocation (1-3 weeks sling internal rotation), potentially unstable fractures, reconstructive shoulder surgery, or for very temporary pain control. External rotation bracing for dislocation is not recommended."

Further, "Reviewing the literature and standard of care, patients are advised to continue activity as tolerated, as studies have shown that immobilization significantly reduces activity levels. As per the most recent office visit note provided for my review by Viviane Etienne, M.D. and Idy Liang, NP dated 01/10/2023, the claimant continued to complain of headache and pain in the cervical spine, bilateral shoulders, thoracic spine, bilateral hips, left knee, and low back. Examination of the bilateral shoulders revealed positive impingement test. The claimant was advised to continue physical therapy and chiropractic care. Reviewing the documentation provided, in the case, claimant does not have any dislocation that would require use of orthosis and as such current management would be deviation from the standard of care and therefore Shoulder Orthosis, Acromio/Clavicular (Canvas and Webbing Type), Prefabricated, Off-the-Shelf was not medically necessary or appropriate in this case."

Dr. Patel emphasized, with regard to the cold compression unit, "Cold compression unit essentially adds cryotherapy and compression to damaged tissues. Most used for swelling, inflammation, and pain associated with injuries such as sprain, and muscle pull. Patients that are high risk such as post-surgical patients [hip and knee arthroplasty] for clot formation, or DVT are often suggested to use pneumatic compression therapy to prevent such conditions. It is often indicated for post-surgical patients, patients with edema from burns, post-operative edema, ligament sprain (i.e. ankle sprain with swelling), assist in healing of cutaneous ulceration (wounds) and reduce compartment pressures. Also indicated for patients with vascular or lymphatic insufficiency such as Chronic Venous Insufficiency, venous stasis ulcers, post mastectomy edema and chronic lymphedema."

Further, "Compression units are often used in post-surgical patients or patients with lymphatic or vascular insufficiency. The standard of care to use a cold compression unit is generally in patients that have just had surgery or have edema, and the effect of therapy diminishes with time and therefore should be

used immediately after injury occurs. As per the most recent office visit note provided for my review by Viviane Etienne, M.D. and Idy Liang, NP dated 01/10/2023, the claimant continued to complain of headache and pain in the cervical spine, bilateral shoulders, thoracic spine, bilateral hips, left knee, and low back. Examination of the lumbar spine revealed painful and decreased ROM. Trigger point tenderness were noted. Jump sign, local twitch response, and referred pain were positive. Examination of the bilateral shoulders revealed positive impingement test. The claimant was advised to continue physical therapy and chiropractic care. Reviewing the documentation, there was no such notation, and neither did patients have any orthopedic procedure or post-traumatic wounds which would support the medical necessity of the requested cold compression therapy device. This treatment plan does not tie in with the standard of care and therefore would not be medically necessary or appropriate. Additionally, cold compression therapy is generally recommended post knee surgery for lower extremities. In this case, the request is being made for the shoulder, and low back from 01/26/2023-02/22/2023 which is not supported by the cited references."

Dr. Patel indicated in regard to the SAM unit, "SAM [sustained acoustic medicine] unit is a form of extracorporeal shock wave therapy and also, an ultrasound treatment, that delivers constant ultrasound to the applied tissue.

Medical standard of care: The Standard of care for acute pain management is to start with conservative therapy including physical therapy and NSAID. If pain persists, pharmacologic therapy may be escalated with opioids being the last attempt. Studies have not shown any clear evidence of the effectiveness of such therapy in the treatment and therefore it should not be used in the management of pain."

Further, "Reviewing the studies and standard of care, SAM (Low-intensity therapeutic interventions) is not recommended in the management of pain. Studies have not shown the efficacy of this treatment in the management of musculoskeletal pain. As per the most recent office visit note provided for my review by Viviane Etienne, M.D. and Idy Liang, NP dated 01/10/2023, the claimant continued to complain of headache and pain in the cervical spine, bilateral shoulders, thoracic spine, bilateral hips, left knee, and low back. The claimant was advised to continue physical therapy and chiropractic care. Reviewing the records provided, SAM unit and patches were provided for the musculoskeletal pain which is not standard of care. The standard of care for the management of soft tissue injuries includes physical or chiropractic therapy and pharmacological management with NSAIDs as part of conservative therapy. Also, It is recommended to use such devices under expert supervision and should not be provided for home use without providing adequate knowledge of use. Therefore, the provided SAM unit and patches from 01/26/2023-02/22/2023 were not appropriate or medically necessary in this case."

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

William King, MD, authored a rebuttal dated 5/5/23 in which he argued, in relevant part, "

Dr. King indicated "In this case, the SAM device was prescribed as an adjunct therapy to accelerate the healing of musculoskeletal injury, reduce the non-acute pain level and provide an alternative therapy to opioid medication. A SAM device accelerates injury recovery and provides rapid pain reduction without the use of opioids. Most injuries are healed in 4-6 weeks. It can be worn back at work or for at-home treatment. It can be used in conjunction with physical therapy and rehab. The primary benefits of the device are getting the patient back to work faster and eliminating the dependence and cost of opioid-based pain medication."

In addition, Dr. King emphasized, "The primary mechanism of action for the SAM device and the multi-hour treatment is accelerated healing and pain reduction."

Dr. King indicated with regard to the shoulder orthosis, "it should be noted that a shoulder orthosis functions differently than total immobilization. It allows a sufficient amount of movement. In fact, used properly, the shoulder orthosis provides proper support to better enable the patient to perform activities of daily living. In this case, the patient sustained injuries to his bilateral shoulders in a motor vehicle accident, dated 1/5/2023. As per the patient's evaluation on 1/10/2023, he had complaints of 10/10 constant, sore, and stiff bilateral shoulder pain along with swelling and positive Impingement."

In conclusion, Dr. King noted, "the shoulder orthosis helps by 1) Relieving pain, 2) Resting the injured tissues by taking some of the stressful loads, 3) Protecting the injured structures from further injury, 4) Allowing for initial tissue healing, and 5) Preventing future injury by support or joint stabilization. Therefore, prescription of shoulder orthosis, in this case, was medically necessary and related to the treatment of the accident-related injuries."

With regard to the cold compression unit, Dr. King stated, "I would note that the patient indeed had injuries to his neck, middle back, lower back, bilateral shoulders, bilateral hips and left knee due to motor vehicle accident occurred on 1/5/2023 I would note that when the patient presented for an evaluation of his injuries on 1/10/2023, he had complaints of severe neck, middle back, lower back, bilateral shoulders, bilateral hips and left knee that was constant, sharp, throbbing and pressure like with stiffness, soreness, swollen. The pain worsened by cleaning, moving items, laundry, movement, turning to the left, turning to the right and turning side to side, lifting, movement, laying on area, sitting a long time, standing a long time and walking. The patient reported difficulty staying asleep due to pain."

In summarizing the medical necessity for this device, Dr. King emphasized, "The cold compression unit decreases fluid build-up (swelling), slows the release of chemicals that cause pain and inflammation, decreases pain reducing the ability of nerve endings to conduct impulses, and aids in pain relief by limiting the muscle's ability to maintain contractions, thus reducing muscle spasms. Therefore, the prescribed cold compression unit was medically necessary in this case."

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. Patel and the rebuttal of Dr. King, I find Dr. Patel's arguments more persuasive as to the lack of medical necessity for the durable medical equipment at issue.

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

Accordingly, after reviewing the entire record and after careful consideration of the parties' oral arguments, I find in favor of Respondent. 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.

12/03/2023
(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:

b3182ebcf5fd95f1aa1cdf7a7e7fb0ee

Electronically Signed

Your name: Diane Flood Taylor
Signed on: 12/03/2023