

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Walmed Equipment LLC
(Applicant)

- and -

Unitrin Safeguard Insurance Company
(Respondent)

AAA Case No. 17-22-1272-6843

Applicant's File No. ZJ161685065

Insurer's Claim File No. 22123730548

NAIC No. 40703

ARBITRATION AWARD

I, Lisa Capruso, 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 11/29/2023
Declared closed by the arbitrator on 11/29/2023

Ilya Murafa, Esq. from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

Arthur DeMartini, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,511.79**, 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

Applicant seeks reimbursement for durable medical equipment given to the Assignor, a 30-year-old female, on 7/2/22, after an accident of 6/2/22.

Respondent denied the claim based on Dr. Christopher Burrei's peer review of 8/22/22.

4. Findings, Conclusions, and Basis Therefor

Applicant submitted a claim to the Respondent for durable medical equipment given to the Assignor after an automobile accident that occurred durable medical equipment on 6/2/22. Assignor, the driver of the vehicle, alleged injuries to the neck and back as a result. In dispute is date of service 7/2/22 for which the Applicant has submitted a bill for a bed board, mattress, cervical pillow, cervical collar, ankle/foot orthosis, water circulating cold/hot pad, heat pad, LSO, and positioning lumbar cushion.

A no-fault provider establishes its prima facie entitlement to judgment by submitting proper evidentiary proof that it generated and mailed the prescribed statutory billing forms to the insurer, that the insurer received it, and that the no-fault benefits were overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 A.D. 3d 742-43 (2d Dept. 2004).

The burden shifts to the Respondent to demonstrate a lack of medical necessity for the items at issue. *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. *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.

Respondent denied the claim based on Dr. Christopher Burrei's peer review of 8/22/22. Dr. Burrei indicated that the several items of medical equipment were given to the Assignor after the initial exam and prior to treatment. In addition, he noted that it was unclear why the Assignor would receive a cervical collar and a LSO which are contrary to the goals of treatment. Furthermore, there was no examination of the ankle and the Assignor was not confined to bed as she is ambulatory. The water circulating pad with pump would be of no clinical usefulness in the absence of post-surgical treatment. Dr. Burrei cited medical guidelines to support his opinion.

When the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity. *West Tremont Medical Diagnostic P.C., v. GEICO*, 13 Misc.3d 131 (A), 824 NYS 2d 759 (App. Term 2d & 11th Dists, 2006). Applicant submitted an Affirmation from Dr. Dora Hirsch as rebuttal to the peer review. I find that this report is not persuasive as it is mostly general statements regarding the numerous items of medical equipment. Applicant has not submitted evidence which rebutted the Respondent's peer review.

In addition, Respondent submitted Dr. Burrei's response to the rebuttal wherein Dr. Burrei stated that was not clear to why an Assignor with soft tissue injuries would require eight to nine different medical supplies at the time of an initial evaluation which was two weeks subsequent to the trauma. Furthermore, the supplies were not distributed until two weeks later. He indicated that it is curious how the practitioner would know that the Assignor would require these devices in spite of the fact that conservative treatment was recommended. Dr. Burrei added that it should be noted the Assignor had little more than minor musculoskeletal injuries and would not require a battery of

supplies as well as multiple conservative treatment modalities. Dr. Burrei's peer review and addendum are persuasive and establish a lack of medical necessity for the medical supplies. Applicant has not submitted persuasive rebuttal.

Accordingly, the Applicant's claim is denied.

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 NJ
SS :
County of Hudson

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

12/04/2023
(Dated)

Lisa Capruso

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:
07f1e46368fbc4167ad3583f9027efeb

Electronically Signed

Your name: Lisa Capruso
Signed on: 12/04/2023