

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Grand Plus Supply Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1302-7432
Applicant's File No.	N/A
Insurer's Claim File No.	0521976530101015
NAIC No.	22063

ARBITRATION AWARD

I, Mary Anne Theiss, 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: Claimant

- | | |
|--------------------------------------|------------|
| 1. Hearing(s) held on | 12/06/2023 |
| Declared closed by the arbitrator on | 12/06/2023 |

Usman Nawez, Esq. from Ratsenberg & Associates, P.C. (Long Island) participated virtually for the Applicant

Crystal Russo, Esq. from Geico Insurance Company participated virtually for the Respondent

- The amount claimed in the Arbitration Request, **\$980.72**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
- Summary of Issues in Dispute

The Claimant, a thirty-nine-year-old female, was involved in a motor vehicle accident, as a seat-belted passenger, on July 24, 2022.

The Applicant, Grand Plus Supply, Inc., is seeking \$980.72 reimbursement for a Thermophore (E0215), an egg crate mattress (E0272), and a lumbosacral orthosis (LO627), for \$499.43; as well as a cervical pillow (E0190), bedboard (E0273), lumbar cushion (E2611); and a cervical collar (LO172), for \$481.29.

The denial is based on two peer reviews by Robert Sohn, D.C., dated December 13, 2022, and sworn to on December 15, 2022.

4. Findings, Conclusions, and Basis Therefor

The Claimant, a thirty-nine-year-old female, was involved in a motor vehicle accident, as a seat-belted passenger, on July 24, 2022.

The Applicant, Grand Plus Supply, Inc., is seeking \$980.72 reimbursement for a Thermophore (E0215), an egg crate mattress (E0272), and a lumbosacral orthosis (LO627), for \$499.43; as well as a cervical pillow (E0190), bedboard (E0273), lumbar cushion (E2611); and a cervical collar (LO172), of \$481.29.

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The Applicant presented a Prima Facie case for entitlement of benefits. Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report or other competent medical evidence that sets forth a clear, factual basis and a medical rationale for the denial(s). *Amaze Medical Supply, Inc., v. Eagle Ins. Co.*, 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); *Tahir v. Progressive Cas. Ins. Co.*, 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); *Healing Hands Chiropractic, P.C., v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); *Millennium Radiology, P.C., v. New York Cent. Mut.*, 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); *Beal-Medea Prods., Inc., v. GEICO Gen. Ins. Co.*, 27 Misc 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); *All Boro Psychological Servs., P.C., v. GEICO Gen. Ins. Co.*, 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

Dr. Sohn went through each device and stated that the standard of care for chiropractic treatment of a traumatic soft tissue injury of the spine is to begin with a complete and detailed physical examination; form a primary or differential diagnosis; and begin conservative management, consisting of spinal manipulation, physical therapy modalities and therapeutic exercises, if necessary, for at least six weeks, until a follow-up examination is performed.

In this case, there was no evidence that the chiropractic was providing any significant relief with hot and cold packs; no evidence of any ongoing difficulty or recommendations for prolonged bedrest or that the Claimant was at a high risk of pressure ulceration and, clearly, no evidence of any significant muscular

weakness or atrophy that was noted from the T9 vertebra down to the sacrococcygeal junction that would warrant this particular device of a lumbosacral orthosis.

In the second peer review, Dr. Sohn stated that, based on the documentation submitted, it was his opinion that the cervical pillow, the bedboard, the lumbar cushion, and the cervical collar were not chiropractic/ medical necessities and should not be allowed for payment.

Dr. Sohn went through each device and gave a rationale as to why they were not medically necessary.

When an insurer, through a peer review or medical exam, presents sufficient evidence establishing a lack of medical necessity, the burden then shifts back to the applicant to present its own evidence of medical necessity. *West Tremont Medical Diagnostic, P.C., v. GEICO Ins. Co.*, 13 Misc. 3d (131(A) (App. Term, 2nd Dept., 2006); *Alfa Medical Supplies v. GEICO General Ins. Co.*, 38 Misc. 3d 134(A) (App. Term, 2nd Dept., 2013).

There is no formal rebuttal. A review of the medical records substantiates all that Dr. Sohn stated, in his peer reviews.

I find that both of Dr. Sohn's peer reviews set forth a clear, factual basis and a medical rationale for Respondent's denial of Applicant's claim for the medical devices in dispute. I find that Respondent has established a lack of medical necessity for the same.

It has been held that *"For an expense to be considered medically necessary, the treatment, procedure or service ordered by a qualified physician must be based on an objectively-reasonable belief that it will assist in the patient's diagnosis and treatment and cannot be reasonably dispensed with. Such treatment, procedure or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence and must be reasonable in light of the subjective and objective evidence of the patient's complaints."* *Nir vs. Progressive Ins. Co.*, 7 Misc.3d 1006(A), 2005 N.Y. Slip Op. 50466(U) (Civ. Ct. Kings Co., Nadelson, J., Apr. 7, 2005).

There is no rebuttal to Dr. Sohn's peer reviews. The medical records do not substantiate why the various items of medical equipment were prescribed, and I sustain Respondent's defense to that effect. Said defense overcomes Applicant's prima facie case of entitlement to No-Fault compensation. Based on the evidence before me, I find that the denial was justified, and the claim is denied, in its entirety.

I want to thank the parties for taking the time to prepare their case.

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 NY

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

12/11/2023
(Dated)

Mary Anne Theiss

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:
214de64acba94964f1a852f2536aa5c7

Electronically Signed

Your name: Mary Anne Theiss
Signed on: 12/11/2023