

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Great Neck Supply Inc.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1300-3885
Applicant's File No.	SS-244489
Insurer's Claim File No.	8772136410000001
NAIC No.	22055

ARBITRATION AWARD

I, Camille Nieves, 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: Eligible Injured Person (KR)

1. Hearing(s) held on 12/11/2023
Declared closed by the arbitrator on 12/11/2023

Gregory Itingen from Samandarov & Associates, P.C. participated virtually for the Applicant

Nicole Jeffares from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,574.79**, 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 rental of a SAM unit for a 29 year old restrained male driver from 3/15/23 to 4/4/23 following a motor vehicle accident on 11/29/22. The charges were timely denied based on a peer review by Dr. Howard Levy dated 5/2/23 based on lack of medical necessity.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for rental of a SAM unit from 3/15/23 to 4/4/23 following a motor vehicle accident on 11/29/22. The charges were timely denied based on a peer review by Dr. Howard Levy dated 5/2/23 based on lack of medical necessity.

The peer reviewed the pertinent records and notes the EIP was a 29 year old restrained male driver who did not go to an ER and was evaluated on 11/30/22 for neck, back, left shoulder and knee pain. The unit was prescribed on 12/7/22 at a follow up visit.

On exam, there was left shoulder pain and painful range of motion in the left shoulder. Impingement was positive and impingement syndrome was diagnosed. Therapy was prescribed and commenced on 12/2/22 and the treatment up to 4/3/23 - 36 sessions - was for therapy to the cervical spine but not the shoulder.

Follow up visits to the physician on 12/7/22 and 12/21/22 were reviewed. A left shoulder MRI reported impingement, hypoplastic labrum and biceps tendon, tendinosis of the SS and IS tendons/cuff, AC joint narrowing with spurring and synovitis.

On 1/27/23 an exam noted left shoulder pain with tenderness, decreased range of motion and positive Neer's impingement, Hawkins, Speed's and Yergason's tests. Impingement syndrome was diagnosed and therapy was prescribed. On 2/1/23 the findings, diagnosis and treatment was the same. A SAM unit was prescribed on 2/14/23. On 2/27/23 and 3/8/23 the findings and diagnosis was the same and therapy was continued.

The peer states the unit was medically unnecessary because it is not consistent with the guidelines. The peer then cites to an article (Winkler, et. al.) pertaining to the use of a SAM (sustained acoustic medicine) to treat musculoskeletal injuries which described the modality's function in stimulating cellular proliferation, increasing microstreaming and cavitation in situ and increasing tissue perfusion and permeability.

The peer continues that although the cited article noted systematic review focused on SAM for treatment of musculoskeletal injuries, other relevant studies using similar treatment parameters may be available in the literature to aggregate and synthesize the clinical literature. Thus, the effectiveness of the SAM unit was not clearly understood.

I find this discussion fails to demonstrate lack of medical necessity by virtue of its language indicating other relevant studies using similar treatment parameters may be available. This statement does not indicate the treatment and device are a departure from standards of care.

Finally, the peer states the patient did not receive any conservative treatment to the left shoulder before the unit was prescribed and used and this is a departure from standards of care which include therapy, medications (NSAIDs), exercise, acupuncture, injections, activity modification and strengthening program all of which have proven benefits in pain management.

I find this statement sufficient to establish lack of medical necessity shifting the burden to applicant.

A rebuttal is submitted by Wei Hong Xu, NP, who states she prescribed the unit on 2/17/23 after her evaluation on 11/30/22 when impingement syndrome was diagnosed and therapy was prescribed. On 2/1/23 the diagnosis was the same and pain continued. Therapy was continued. On 2/17/23 a SAM unit was prescribed for home use in conjunction with therapy.

On 3/8/23 exam findings and diagnosis were the same and therapy was continued.

NP Xu states the unit was prescribed based on the exam findings and diagnosis to alleviate pain.

At no point does the NP mention that none of the therapy treatments were to the shoulder. The rebuttal is focused on the benefits of a SAM unit in general which was clearly not used in conjunction with therapy as none was provided to the left shoulder.

The notes indicate no treatment to the shoulder was provided at therapy sessions and that the only conditions being treated were cervicalgia and thoracic spine pain. Left shoulder pain is not even mentioned.

The peer correctly analyzed the records and discussed the standard of care which was obviously not followed.

The rebuttal is devoid of any factual discussion for why this patient did not undergo a course of conservative treatment or to even explain why DME was ordered to treat the shoulder when therapy was ordered and continued on each and every visit but was never administered to the shoulder.

I find the peer sufficient to establish the standard of care which was followed on paper but was never administered to the left shoulder. The rebuttal ignores this standard which was not followed and discusses in seven pages the usefulness of a SAM unit but not as a standard of care which is a conservative course of treatment.

The denial is sustained.

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 FL

SS :

County of Osceola

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

12/12/2023
(Dated)

Camille Nieves

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:
43a86f97da47170d6b21f5bc189b40f4

Electronically Signed

Your name: Camille Nieves
Signed on: 12/12/2023