

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

CPM Medical Supply Inc  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1286-4520
Applicant's File No.	00110041
Insurer's Claim File No.	8731153420000004
NAIC No.	35882

**ARBITRATION AWARD**

I, Kevin R. Glynn, 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 11/17/2023  
Declared closed by the arbitrator on 11/17/2023

Mikhail Guseynov, Esq. from Drachman Katz, LLP participated virtually for the  
**Applicant**

Lisa Halloran, Esq. from Geico Insurance Company participated virtually for the  
**Respondent**

2. The amount claimed in the Arbitration Request, **\$772.42**, 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

The Assignor ID, a 36yo female driver, was injured in a motor vehicle accident on 8/16/22. In dispute are Applicant's claims for delivery/setup on 11/18/22 in the amount of \$100.00; a shoulder CPM provided from 11/18-22-12/1/22 in the amount of \$436.66; for a CTU provided on 11/18/22 in the amount of \$235.76. Respondent denied the claims based on the peer review report by Dr. Robert Cristofaro, M.D., dated 1/23/23. Therefore, there is an issue regarding the medical necessity of the claims, and if necessary, the proper amount of reimbursement pursuant to the applicable fee schedule.

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

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

I find that Applicant established a prima facie case of entitlement to reimbursement for its claims. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2<sup>nd</sup> Dept. 2004). I also find that Respondent timely denied the claims.

Respondent's evidence established that the bills were denied pursuant to the peer review report by Dr. Robert Cristofaro, M.D., dated 1/23/23. Dr. Cristofaro opined that the CPM was not necessary because it will not help acquire mobility but make the Assignor dependent on external support. He opined that in the absence of supervision the Assignor may exaggerate the injury. He opined that the literature did not support the use of CPM after arthroscopic surgery because the same clinical outcome is achieved through manual physical therapy sessions. He opined further that the ideal treatment postoperatively should be continuation of physical therapy to regain full normal range of motion and optimum shoulder function.

Dr. Cristofaro opined that the CTU was not necessary because the Assignor underwent a routine shoulder arthroscopy and there was no major risk of massive swelling during the postoperative period. He opined further that a heating pad or a bag of ice was sufficient for the topical application of heat or cold. He concluded that there was no medical necessity for any future use of the shoulder CPM and cold therapy including repeat refills and associated supplies. Respondent has presented a medical rationale and factual basis to support its defense of lack of medical necessity. See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2, 11 and 13 Jud. Dists. 2014). Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co. 2006 NY Slip Op 52116 (App Term 1<sup>st</sup> Dept. 2006).

Applicant relies on the rebuttal report by Dr. Maxim Tyorkin, M.D., dated 10/11/23. I find that Dr. Tyorkin has meaningfully discussed and rebutted the opinions presented by Dr. Cristofaro. See generally, Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009]. Specifically, Dr. Tyorkin opined that the CPM was necessary because by using a motorized device to move the joint very gradually, it was possible to significantly accelerate recovery time by decreasing soft tissue stiffness, increasing range of motion, promoting healing of joint surfaces and soft tissue, and preventing the development of motion-limited adhesions. He opined that this is accomplished without joint pain, discomfort or effort (passively) as the machine moves a joint through a defined (prescribed) range of motion for an extended period of time. He noted that studies have shown that patients using CPM devices require less pain medication, recover faster and therefore need less physical therapy. He opined further that the CPM was supplemental to in-office treatment, not duplicative and would be considered complementary, not

excessive. He opined that CPMs and CTUs can expedite the recovery process by helping the patient regain joint function more quickly. He opined that uncomplicated shoulder arthroscopy still carries some risk of post-operative complications, such as blood clots or joint stiffness and that CPM devices can help in preventing these issues. He opined that the CTU was necessary to decrease swelling and that its use makes the Assignor less likely to rely on narcotics. He opined that cold therapy has long been accepted as an effective tool for reducing inflammation, pain and swelling. He opined that bags of ice can cause a patient's incision to get wet, possibly leading to infection at the surgical site. I find the rebuttal report more persuasive than the peer reports and by a preponderance of the evidence has established the medical necessity of the claims. Applicant is awarded reimbursement of its claims.

Respondent correctly noted that Applicant billed code A9901 for delivery and set up and that no fee is listed for this code. As such, Applicant is denied separate reimbursement for this code. Respondent also correctly noted that the prescription was for a two-week rental of the CTU, and that pursuant to the applicable fee schedule Applicant was owed a total amount of \$10.96 (\$5.48 per week) for the rental prescribed.. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2000. I find Respondent's remaining fee schedule arguments unpersuasive. Applicant is therefore awarded reimbursement of the claims in the total amount of \$447.62.

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
	CPM Medical Supply Inc	11/18/22 - 11/18/22	\$235.76	Awarded: \$10.96
	CPM Medical Supply Inc	11/18/22 - 11/18/22	\$100.00	Denied
	CPM Medical Supply Inc	11/18/22 - 12/01/22	\$436.66	Awarded: \$436.66
Total			\$772.42	Awarded: \$447.62

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/13/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

In the instant matter Applicant is awarded interest pursuant to the no-fault regulations. 11 NYCRR 65-3.9 (a) provides that Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." Pursuant to 11 NYCRR 65-3.9 (c), "if an applicant does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." Applicant electronically submitted its claim for arbitration on 2/13/23, more than thirty days after receipt of the denial of claims. Therefore, interest shall run effective 2/13/23.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

An attorney's fee of 20% shall be paid on the sum of the awarded claim plus interest, subject to a maximum of \$1,360.00.

- 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 Suffolk

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

12/18/2023  
(Dated)

Kevin R. Glynn

### **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:**  
50a5d429c97179d374dd1e7c999d26a7

### **Electronically Signed**

Your name: Kevin R. Glynn  
Signed on: 12/18/2023