

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LTV Associates Inc d/b/a Best Care Pharmacy (Applicant)	AAA Case No.	17-22-1279-1306
	Applicant's File No.	367466
- and -	Insurer's Claim File No.	0672378783 2NA
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Amanda R. Kronin, 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: JR

1. Hearing(s) held on 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Neil Menashe, Esq from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

Olga Groyenko, Esq from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,600.40**, was AMENDED and permitted by the arbitrator at the oral hearing.

In support of its position, Applicant submitted amended claims totaling \$1592.34.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The Assignor, JR, a 72 year old male was injured as the driver of a motor vehicle involved in an accident on 6/06/22. The Assignor

subsequently commenced treatment. Applicant seeks reimbursement for lidocaine 5% ointment and celecoxib provided to the Assignor on 6/20/22. Respondent denied medical necessity for said medication citing a Peer Review by Dr. Ayman Hadhoud, MD, dated 8/09/22. The issue before this Arbitrator is: whether the medication was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

As a result of the accident, the Assignor sustained injuries. Applicant seeks reimbursement for medication provided to the Assignor on 6/20/22.

A health care provider Applicant establishes its prima facie entitlement to No-Fault benefits by submitting proof that its claim, on the statutory billing form, was mailed and received by the insurance company and that payment is overdue. Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co., 25 N.Y. 3d 498, 14 N.Y.S. 3d 283 (2015). Once Applicant has established a prima facie case, and in order to rebut the presumption of medical necessity, the burden then shifts to insurer-Respondent to present sufficient evidence to establish a lack of medical necessity for the services rendered. The insurer bears the burden of production. Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 13 Misc. 3d 136(A), 831 N.Y.S.2d 351(Table)(App. Term 1st Dept. 2006).

In support of its position, Applicant submitted amended claims in the amount of \$1592.34 for the medication at issue, an assignment of benefits form and contemporaneous medical documentation. Accordingly, Applicant has established its prima facie case.

Respondent denied medical necessity for said medications filled on date of service 6/20/22 citing a Peer Review by Dr. Ayman Hadhoud, MD, dated 8/09/22. Summarily, Dr. Hadhoud opines that topical non-steroidal anti-inflammatory medications such as lidocaine ointment may be indicated in limited circumstances such as when there is a relative contraindication to the use of oral anti-inflammatories. He further noted that the treatment of choice according to these Guidelines would have been to provide a non-selective, oral non-steroidal anti-inflammatory medication, with or without an oral muscle relaxant. According to Dr. Hadhoud, acute and chronic low back pain, widespread musculoskeletal pain, does not support the use of topical non-steroidal anti-inflammatory medications. Based on the foregoing, Dr. Hadhoud concluded that the medications were not medically necessary.

I find that the peer review report set forth a sufficiently detailed factual basis and medical rationale to successfully rebut the presumption of medical necessity attached to Applicant's claim form, and establish prima facie that the billed for services were not medically necessary.

Based upon the foregoing, respondent has set forth a cogent medical rationale in support of its defense. Respondent has factually demonstrated the services rendered were not medically necessary. Accordingly, the burden now shifts to applicant, who bears the ultimate burden of persuasion. See, Bronx Expert, supra.

Applicant has not submitted any rebuttal to the peer, but rather relies upon the medical reports. However, the aforementioned medical reports do not discuss the necessity of the lidocaine and celecoxib. Comparing the relevant evidence submitted by the parties, and after hearing arguments from the parties' representatives, I find the peer review report to be facially sound, and, therefore, sufficient to sustain the Respondent's burden of proof with regard to the lack of medical necessity for the lidocaine and celecoxib. Applicant has failed to submit a rebuttal to the peer report, and I find Applicant's medical records insufficient to rebut the opinion by Respondent's expert that the medication was not medically necessary. Accordingly,

Applicant's claim seeking reimbursement for the lidocaine and celecoxib 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 NY
SS :
County of Suffolk

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

12/23/2023
(Dated)

Amanda R. Kronin

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:
047e825772efd7ae97f9ce45420c26f8

Electronically Signed

Your name: Amanda R. Kronin
Signed on: 12/23/2023