

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Aruna Supply Inc  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1297-6401
Applicant's File No.	GM23-582172
Insurer's Claim File No.	0663792970000001
NAIC No.	35882

**ARBITRATION AWARD**

I, Elyse Balzer, 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: JA

1. Hearing(s) held on 11/29/2023  
Declared closed by the arbitrator on 11/29/2023

Jason Moroff, Esq from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Crystal Russo from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,097.71**, 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

This arbitration seeks payment for durable medical equipment (DME) dispensed on 1/12/23 to the 33 year old female eligible injured person JA for injuries sustained as the driver of a motor vehicle involved in an accident on 12/8/22.

The issue is:

Has respondent proven the lack of medical necessity of DME based on a peer review dated 2/17/23 by Dr. Kevin Portnoy, DC?

The parties agreed that the above issue was the only issue in contention.

Respondent did not raise any issue of exhaustion and did not present any proof of exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via Zoom, as all arbitration hearings have been conducted telephonically since March 15, 2020 and via Zoom since February 2021 due to the COVID-19 pandemic.

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

On 1/12/23 applicant dispensed the following DME to JA:

LSO

Mattress

Bed Board

Cervical collar (2 piece)

Cervical pillow

Lumbar cushion

Thermophone

Orthopedic car seat

These DME had been prescribed by Dr. Dominic Mazza DC, of Maplewood Chiropractic in Brooklyn, NY, on 12/15/22.

Respondent denied payment for all of the DME dispensed on 1/12/23 based on a peer review, dated 2/17/23, by Dr. Kevin Portnoy, DC.

Applicant submitted a rebuttal, dated 3/28/23, from its expert Dr. Arun Agrawal.

The peer review shows that Dr. Portnoy reviewed medical records, including the report of Dr. Mazza of 12/15/22 and Dr. Mazza's office notes through 1/27/23.

Dr. Portnoy's peer review contained a general standard of care for treating patients, which includes an appropriate evaluation prior to prescription of DME along with detailed instructions on the use of such DME. Dr. Portnoy stated that Dr. Mazza did not meet this standard of care.

However Dr. Portnoy's reliance on outdated and non-relevant medical authority is disturbing. Dr. Portnoy cited to the "Maryland Dept of Health, Maryland Medicaid Coverage Criteria Specialized Car Seats, 2017", "Distractive and mobility enabling lumbar spinal orthosis" by Denis J. DiAngelo, Daniel C. Hillyard, 2016, "iscurr.com.au", an Australian website, NCBI and a 2003 New York Chiropractic College publication.

The authority and citations used by Dr. Portnoy question the efficacy and safety of the various disputed items of DME but do not show that they were prescribed in deviation from generally accepted standards of care.

A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards.

For example, the medical rationale may be insufficient if not supported by evidence of the "generally accepted medical/professional practice." (Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d 608, 777 N.Y.S.2d 241, 2004 NY Slip Op 24034 [Civ Ct, Kings County 2004].)

"Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." (Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d at 616, *supra*.)

Alternatively, if the plaintiff offers evidence that its medical services were consistent with generally accepted medical practice, the defendant's peer review report will be afforded less weight and defendant may fail to sustain its burden of proof at trial. (*see Elm Medical P.C. v. American Home Assurance Co.*, 2003 N.Y. Misc. LEXIS 1337, 2003 NY Slip Op. 51357U [Civ Ct 2003] [Defendant peer review doctor's conclusion that the electrodiagnostic testing was not "properly documented" did not contradict plaintiff's testimony of medical necessity and defendant failed to carry its burden].)

All in all I find that Dr. Portnoy's peer review does not carry respondent's burden of proof, by a fair preponderance of the credible evidence, to show that the provision of any of the items of disputed DME to JA were in deviation from generally accepted standards of care and not necessary for the home use by JA to treat and alleviate her automotive accident injuries.

The rebuttal showed that the disputed DME were supplementary to office treatment and necessary to treat JA's injuries and pain while out of the office.

Respondent has not presented any proof to contradict applicant's fees for the disputed DME.

Based on the above, applicant's claim is granted.

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
	<b>Aruna Supply Inc</b>	<b>01/12/23 - 01/12/23</b>	<b>\$1,097.71</b>	<b>Awarded: \$1,097.71</b>
<b>Total</b>			<b>\$1,097.71</b>	<b>Awarded: \$1,097.71</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

From 5/10/23 to date of payment of the award

C. Attorney's Fees

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

In cases filed before 2/4/15, the Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e)(effective April 5, 2002). For cases filed after 2/4/15, the respondent shall pay the Applicant an attorney's fee in accordance with newly promulgated 11 NYCRR 65-4.6 (d), as amended by the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

- 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 Westchester

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

12/29/2023  
(Dated)

Elyse Balzer

### **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:**  
864ff1723e4e017e3a387da1265a1321

### Electronically Signed

Your name: Elyse Balzer  
Signed on: 12/29/2023