

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Healthy Elite Inc
(Applicant)

- and -

Maya Assurance Company
(Respondent)

AAA Case No. 17-23-1327-9567

Applicant's File No. 19637

Insurer's Claim File No. 2-231754-01

NAIC No. 36030

ARBITRATION AWARD

I, Kent Benziger, 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: M.M.

1. Hearing(s) held on 06/24/2024
Declared closed by the arbitrator on 06/24/2024

Frank S. Patruno, Esq. from Frank S. Patruno Law Offices, P.C participated virtually for the Applicant

Bryan Visnius, Esq. from De Martini & Yi, LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$806.64**, 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

On January 19, 2023, the Assignor/Eligible Injured Party, a 39-year-old male, involved in a motor vehicle accident. In dispute is Dr. Habib's prescription of an LSO brace (L0631 \$806.64) provided by Applicant Healthy Elite on March 24, 2023. The Respondent issued a timely denial based on the peer review of Dr. Vincent Notabartolo. The Applicant has failed to submit a rebuttal to the peer review.

4. Findings, Conclusions, and Basis Therefor

On January 19, 2023, the Assignor/Eligible Injured Party, a 39-year-old male, involved in a motor vehicle accident. Following the accident, the Assignor was evaluated at Nyack Hospital.

On January 24, 2023, the Assignor was examined by Dr. Marc Habib, D.C. Following an evaluation, the diagnoses included residuals of cervicothoracic and lumbosacral sprain/strain, DDX, lumbar and cervical radicular syndromes and abdominal pains and headaches. The Assignor commenced chiropractic treatment. The Assignor also treated with Dr. Billy Ford who administered trigger point and epidural steroid injections.

In dispute is Dr. Habib's prescription of an LSO brace (L0631 \$806.64) provided by Applicant Healthy Elite on March 24, 2023.

Denial/Peer Review. The Respondent issued a timely denial based on the peer review of Dr. Vincent Notabartolo. Dr. Notabartolo opined that it is standard chiropractic practice to treat soft tissue injuries with mobilization/adjustment technique to increase flexibility and joint motion - not restriction. From his review of the medical records, he found the Assignor had commenced chiropractic care to normalize joint function, free restricted joints, increase flexibility and increase joint mobility. The peer review found the use of an LSO runs contrary to these treatment goals. He then cited the following establishing that mobilization techniques should be used to treat these injuries - nor restrictive techniques. :

In an article entitled, Clinical Practice Linked to the International Classification of Functioning, Disability, and Health from the Orthopaedic Section of the Am Charles Physical Therapy Association, it states "Clinicians should consider utilizing thrust manipulative procedures to reduce pain and disability in patients with mobility deficits and acute low back and back-related buttock or thigh pain. Thrust manipulative and non-thrust mobilization procedures can also be used to improves spine and hip mobility and reduce pain and disability in patients with sub-acute and chronic low back and back-related lower extremity pain" J Orthop Sports Phy Ther. 2012 Apr; 42(4): A1-57.

...

The Orthotic Treatment of Acute and Chronic Disease of the Cervical and Lumbar Spine, it states "No definitive evidence as yet supports the use of orthosis after spinal intervention or in painful conditions of the cervical lumbar spine.

Again, Dr. Westerband recommended against reimbursement.

Analysis. A presumption of medical necessity attaches to a Respondent's admission of the Applicant's timely submission of proper claim forms. The Respondent then bears the burden to prove that the treatment was not medically necessary. *Kings Med. Supply Inc. v. Country-Wide Ins.*, 5 Misc.3d 767 (2004); *Behavioral Diagnostics v. Allstate Ins. Co.*, 3 Misc.3d 246 (2004); *A.B. Med. Servs v. Geico Ins.* 2 Misc.3d 16 (App. Term 2d Dept. 2003). In this case, the peer review must submit "objective testimony or evidence to establish that his opinion is what is generally accepted in the medical profession." *Williamsbridge Radiology v. Travelers*, 14 Misc.3d 1231(a) (Civ. Ct Kings Co. 2007). When a carrier uses a peer review as basis for the denial, the report must contain evidence of the applicable generally accepted medical/professional standards as well as the provider's departure from those standards. *Acupuncture Prima Care v. State Farm Mut. Auto Ins. Co.* 17 Misc. 3d 1135 (Civ. Ct. Nassau, 12/03/07). Therefore, a peer reviewer must thoroughly review the relevant medical records and give evidence of generally accepted medical standards.

The peer review is persuasive. Dr. Westerband has cited authoritative sources that this expensive lumbar orthosis provides immobilization which is contrary to the goal of treatment which is to increase flexibility and mobility. Another source cited by the peer review found no evidence to support the use of the LSO. Applicant's counsel notes the cited sources are approximately ten years old. However, without the Applicant submitting a rebuttal with citations to more recent sources, this argument is without merit.

The ultimate burden of proof on issues of medical necessity lies with the plaintiff. *Dayan v. Allstate Ins. Co.*, 2015 N.Y. Slip Op. 51751(U), 2015 WL 7900115 (App. Term 2d, 11th & 13th Dists. Nov. 30, 2015). Once Respondent satisfied its burden of proof establishing a lack of medical necessity, "plaintiff must rebut it or succumb." *Bedford Park Medical Practice P.C. v. American Transit Ins. Co.*, 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 N.Y. Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). Applicant's claim is denied in its entirety.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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 Orange

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

07/21/2024

(Dated)

Kent Benziger

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:
be189178dc080110fc43c4039bada51a

Electronically Signed

Your name: Kent Benziger
Signed on: 07/21/2024