

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Leonaum Pharmacy Inc d/b/a Advantage
Pharmacy
(Applicant)

- and -

Liberty Mutual Fire Insurance Company
(Respondent)

AAA Case No.	17-23-1284-0876
Applicant's File No.	FL23-58833
Insurer's Claim File No.	049873999-03
NAIC No.	23035

ARBITRATION AWARD

I, Matthew Maroney, 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: EIP

1. Hearing(s) held on 06/25/2024
Declared closed by the arbitrator on 06/25/2024

Nancy Orlowski from Field Law Group, P.C. participated virtually for the Applicant

Danielle Alicea from Liberty Mutual Fire Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,743.26**, 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 is a claim for medication, specifically Ibuprofen, Methacarbonal, and a Lidothal Patch and Gel, provided to the EIP on both 8/27/22 and 10/14/22, following an accident which occurred on 6/17/22.

The respondent denied this claim based on lack of medical necessity.

The respondent supported its denial based upon the peer review reports prepared by Dr. Patel, dated 10/13/22 and 12/14/22, which was countered by a rebuttal report prepared by Dr. Gressel, dated 3/9/23.

Therefore, the issue is whether the respondent properly denied this claim based upon lack of medical necessity.

4. Findings, Conclusions, and Basis Therefor

My decision is based upon the arguments of representatives for both parties, as well as those documents properly and timely submitted to and contained in the ADR Center for this case, as of the date of this arbitration, unless further precluded or admitted as set forth below.

Comparing the relevant evidence presented, I find in favor of the applicant, and grant this claim in its entirety. My reasoning follows.

While the burden is on the applicant to make a prima facie claim for no-fault benefits, a denial based on medical necessity causes the burden of proof to shift to the respondent. The respondent's denial for lack of medical necessity must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic, P.C.v. National Assurance Co.* 5 Misc 3d 975; *Citywide Social Work, et. al. v. Travelers Indemnity Co.*, 3 Misc. 3d 608.

I have carefully considered the timely and relevant evidence presented, and arguments made by both parties, and compared same against the above referenced law governing the issue or issues herein, and set forth my analysis and conclusion below.

The peer review report sets forth a laundry list of records reviewed relative to the 62-year-old male EIP involved in the accident of 6/17/22.

The report details that the EIP did not go to the hospital from the scene of the accident but rather later, on 6/23/22, sought medical care for complaints of pain. Specifically, he reported pain in the lower back, right shoulder, and right hip. The diagnosis was of sprain/strain's of the right shoulder and lumbar spine, and a contusion of the right hip. The EIP was advised to undergo physical therapy, was recommended for MRI/CT scans, computerized range of motion and muscle testing, and was prescribed the medication at issue on each of the dates, each of which were addressed in the two peer review reports.

Both peer review reports conclude that the subject medication was not medically necessary, and notes that the ibuprofen is an anti-inflammatory and pain relief medication and that the FDA notes that all NSAID has the potential to cause increased risk of cardiovascular thrombotic events. The peer review then states that it is often the first line of drugs but come at a huge cost. Finally, relative to the ibuprofen, the peer review report then states that NSAIDs are the standard of care and pain management and is useful in the first line of pain control. However, he indicates that given the side effects they should be used with great caution, are sometimes not efficacious and finally indicates that the ibuprofen is not medically necessary or appropriate because it is being prescribed for long-term use.

This arbitrator does not find the peer reviewer's position with respect to the Ibuprofen to support the denial of the Ibuprofen. The peer reviewer is back and forth with respect to how it would be part of the first line of treatment relative to the standard of care, but may also be dangerous and not helpful, and finally indicates that it should not be used for long-term purposes but there is no evidence that this was prescribed for long-term purposes.

Relative to the Methocarbamol, the peer review reports indicate that back and neck pain are both quite common after a motor vehicle accident, and the standard of care for initial management is always to try nonpharmacologic therapy as most symptoms do

tend to resolve in three to four weeks. However, if symptoms persist, pharmacologic therapy with NSAID is considered the first line. He then cites to authority to indicate that there is "uncertainty" about the efficacy of muscle relaxants like the one under review. The Peer then concludes that this muscle relaxant should only be used for short-term use and with extreme caution, and that long-term use is not accepted as it is habit-forming, and that there is here no notation of failed first-line therapy even though the peer review does not establish how long first-line therapy should be more than the use of an onset is not appropriate as a first-line treatment.

Relative to the Lidocaine, the peer review report indicates that pain is the most debilitating symptom for a patient and it is important to differentiate the type of pain and whether or not it should first be treated with nonpharmacologic therapy. The report also indicates that topical agents that have an effect on the peripheral nervous system are effective at delivering rapid, targeted pain relief without the side effect associated with oral medication. Finally, the Peer indicates that the literature and studies associated with Lidocaine indicate that it is recommended as a treatment for neuropathic pain, however, that in acute pain, the topical has not been shown to have added benefit. This does not mean that there is no benefit, and further, the Peer indicates that there is no evidence of failed physical therapy but does not indicate that this needs to be shown.

Again, I find the peer review reports do not support the lack of medical necessity for the Lidocaine. The reports themselves indicate that the topical medication offers rapid, targeted relief for pain, and only then goes back and forth as to whether or not it is efficacious and/or should be used as a first line of treatment, and either way, does not establish how long one should wait before using it.

A rebuttal report was submitted, and this arbitrator notes that it goes through the medical records and history of this EIP in a manner consistent with that of the peer review report, and therefore, need not be repeated.

It is noted that the rebuttal report then goes through its own discussion of each of the medications and with citation to authority indicates that there is a history in compelling medical journals supporting the use of each of the medications at issue, which counters the position taken by the peer review reports, and argues the benefits of each of the drugs with citation to more studies than that offered by the peer review report, and further, goes into the detailed history of the patient's pain and the treatment that had already been underway.

After carefully comparing the peer review reports against the rebuttal report, I find the rebuttal report overcomes the medical necessity defense raised by the respondent herein, and to that end I find in favor of the applicant herein.

For the reason set forth herein, I find in favor of the applicant, and grant this claim 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Leonaum Pharmacy Inc d/b/a Advantage Pharmacy	08/27/22 - 08/27/22	\$2,264.60	Awarded: \$2,264.60
	Leonaum Pharmacy Inc d/b/a Advantage Pharmacy	10/14/22 - 10/14/22	\$2,478.66	Awarded: \$2,478.66
Total			\$4,743.26	Awarded: \$4,743.26

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/26/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Where a claim is timely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after the receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant, 11 NYCRR 65-3.9(c). The end date for the calculation of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. General Construction Law Section 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.") Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the

rate of 2% per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9 (a).

C. Attorney's Fees

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

For cases filed on or after February 4, 2015, the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon, subject to no minimum fee, and a maximum fee of \$1360.

- 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 Nassau

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

07/25/2024
(Dated)

Matthew Maroney

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:
a72a3ffe1bb7fdcc9b29805c79bb53ea

Electronically Signed

Your name: Matthew Maroney
Signed on: 07/25/2024