

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ahava Medical Supply Corp.
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1325-5332

Applicant's File No. 388953

Insurer's Claim File No. 0721493781
2CA

NAIC No. 19232

ARBITRATION AWARD

I, Paul Israelson, 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: injured person.

1. Hearing(s) held on 07/29/2024
Declared closed by the arbitrator on 07/29/2024

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

Frank Piccininni Esq. from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,554.94**, 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 date of the subject automobile accident was July 5, 2023, involving the injured person, a 31-year-old female, a restrained passenger in the automobile involved in the subject automobile accident.

The applicant made a claim in the amount of \$1,554.94 for the durable medical equipment provided to the injured person on July 13, 2023, breaking down as follows:

\$22.04 for the subject cervical pillow;

\$741.59 for the subject lumbosacral orthosis;

\$153.13 for the subject dry pressure mattress;

\$282.40 for the subject general use back cushion;

\$20.93 for the subject thermophore;

\$233.00 for the subject cervical collar; and

\$101.85 for the subject bed board.

The respondent denied the applicant's claim on the basis that these same durable medical equipment devices were not medically necessary.

Were the subject durable medical equipment devices medically necessary?

4. Findings, Conclusions, and Basis Therefor

On July 29, 2024, the hearing for the within arbitration matter was conducted and closed.

At the hearing, the applicant did not raise any argument as to the timeliness of the respondent's denial of the applicant's claim.

At the hearing, the respondent did not articulate any argument as to the propriety or accuracy of the applicant's calculation of its requested fee.

MEDICAL NECESSITY DEFENSE:

As to the medical necessity of the subject durable medical equipment devices, "For an expense to be considered medically necessary, the treatment, procedure, or service ordered by a qualified physician must be based on an objectively reasonable belief that it

will assist in the patient's diagnosis and treatment and cannot be reasonably dispensed with. Such treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence, and must be reasonable in light of the subjective and objective evidence of the patient's complaints." *Nir v. Progressive Insurance Co.*, 7 Misc.3d 1006(A), 801 N.Y.S.2d 237 (Table), 2005 N.Y. Slip Op. 50466(U), 2005 WL 782806 (Civ. Ct. Kings Co., Nadelson, J., Apr. 7, 2005).

As well, "A no-fault insurer defending a denial of first-party benefits on the ground that the billed for services were not 'medically necessary' must at least show that the services were inconsistent with generally accepted medical/professional practices. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden of proving that the services were not 'medically necessary' , (*Citywide Social Work & Psy, Serv. v. Travelers Indem. Co.*, 3 Misc.3d 608, 609 supra.). '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 value that define its calling (*A.B. Med. Ser. v. New York Central Mut. Fire Ins. Co.*, 7 Misc.3d 1018[A][Civ. Ct. Kings Co.2005]; *Citywide Social Work & Psy Serv. v. Travelers Indemnity Co.*, supra).", *A.R. Medical Art, P.C. v. State Farm Mut. Auto. Ins. Co.*, 11 Misc.3d 1057(A), 815 N.Y.S.2d 493 (Civ. Ct. Kings Cty. 2006).

The respondent provided the September 7, 2023 peer review report by Dr. Harry Jackson MD in support of the respondent's argument that the subject cervical collar, cervical pillow, lumbosacral orthosis, general use back cushion, dry pressure mattress, bed board and thermophore were not medically necessary. Dr. Jackson reviewed the records concerning the injured person's relevant medical history and condition .

Concerning all of the subject durable medical equipment devices, Dr. Jackson argued that the standard of care for the injured person involved continued physical therapy modalities in a professional setting, which he argued would suffice for this injured person to reach maximum possible improvement and that the use of durable medical equipment devices would not add any value to the injured person's rehabilitation program.

With regard to the subject thermophore, Dr. Jackson argued that the physical therapy the injured person had already been receiving would provide a thermal moist heating pad, which was sufficient treatment for the injured person, without the need for the subject thermophore. Dr. Jackson provided medical authority to argue that there is little evidence regarding the effectiveness of short-term thermotherapy for acute and subacute lower back pain and that exercise was more effective for pain relief and functional improvement.

As to the subject lumbosacral orthosis and general use back cushion, Dr. Jackson argued that these devices may be applicable to a patient who has sustained structural instability

of the spinal cord such as a fracture, however, the injured person did not sustain that form of injury as a result of the subject automobile accident. Dr. Jackson argued that immobilizing the spine is contraindicated to the treatment the injured person had been receiving and provided medical authority to argue that there is insufficient evidence indicating that back braces provide a therapeutic effect. Dr. Jackson provided medical authority to argue that continually utilizing a back brace may cause supportive muscles to atrophy and weaken, causing indefinite reliance upon the back brace and greater risk of injury to the spine. Further, Dr. Jackson noted that the injured person had already been provided with a lumbosacral orthosis, and as such, questioned why an additional lumbosacral orthosis had been provided to the injured person. Dr. Jackson provided medical authority to argue that lumbar support pillows had no significant effect on comfort.

Concerning the subject cervical collar, Dr. Jackson argued that there is no clinical evidence that cervical collars, soft collars and cervical pillows are beneficial after acute traumatic injury. Dr. Jackson provided medical authority to argue that cervical collars have been prescribed for patients who have undergone surgery to immobilize the neck, however, the value of a cervical collar over early active mobilization is questionable because early cervical mobilization will give rise to greater improvement, greater cervical range of motion and reduction of pain following a whiplash injury. Dr. Jackson provided medical authority indicating that, if a cervical collar is worn for an extended period of time it could have negative effects such as soft tissue contractures, muscular atrophy, deconditioning, thickening of subscapular tissues and psychological dependence.

Regarding the subject cervical pillow, dry pressure mattress and bed board, Dr. Jackson argued that there was no evidence that the injured person had problems sleeping and that there is inconsistent literature regarding the type and characteristics of a mattress which best serves the purpose of decreasing spinal pain and improving spinal alignment and quality of sleep. Dr. Jackson argued that a cervical pillow, bed board and dry pressure mattress can all contribute to discomfort, and therefore, are not medically necessary.

Consequently, pursuant to the above cited authorities, Dr. Jackson's September 7, 2023 peer review report sustained the respondent's burden of demonstrating that the subject cervical collar, cervical pillow, lumbosacral orthosis, general use back cushion, dry pressure mattress, bed board and thermophore were not medically necessary.

The applicant did not correlate the injured person's relevant medical history and condition to the need for the subject cervical collar, cervical pillow, lumbosacral orthosis, general use back cushion, dry pressure mattress, bed board and thermophore so as to persuasively argue that this injured person could benefit from any of these same devices, and thus, did not rebut the conclusions drawn by Dr. Jackson as set forth in his September 7, 2023 peer review report.

I have reviewed and considered all other arguments, contentions and evidence from both the applicant and the respondent, and find them to be without merit.

In accordance with the foregoing, the applicant's claim in the amount of \$1,554.94 for the durable medical equipment provided to the injured person on July 13, 2023 is denied in its entirety, *cf.* "the insurer may rebut the inference of medical necessity through a peer review and, if the peer review is not rebutted, the insurer is entitled to denial of the claim." e.g., *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table), 2007 N.Y. Slip Op. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007); "Where the assertions of a peer reviewer setting forth a factual basis and medical rationale for his determination that there was a lack of medical necessity for services rendered are unrebutted [sic] by the provider, judgment should be granted to the insurer.", *AJS Chiropractor, P.C. v. Travelers Ins. Co.*, 25 Misc.3d 140(A), 906 N.Y.S.2d 770 (Table), 2009 N.Y. Slip Op. 52446(U), 2009 WL 4639680 (App. Term 2d, 11th & 13th Dists. Dec. 1, 2009).

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 Nassau

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

08/02/2024
(Dated)

Paul Israelson

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:
bd610b3630129dfb75c3f5451fdc3443

Electronically Signed

Your name: Paul Israelson
Signed on: 08/02/2024