

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

HYGGE Medical Supplies Corp.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-24-1340-1940
Applicant's File No. GM24-765750
Insurer's Claim File No. 0592763490101030
NAIC No. 22055

ARBITRATION AWARD

I, Rhonda Barry, 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 08/13/2024
Declared closed by the arbitrator on 08/13/2024

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

Maria Greenman, Hearing Specialist from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,671.26**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the denial is timely. If applicable, interest accrues in accordance with 11 NYCRR§65-3.9.

3. Summary of Issues in Dispute

The EIP, "YJD" is a 50 year old female injured as a restrained passenger in a motor vehicle accident on 11/28/23. There was no loss of consciousness or emergency room visit. Applicant seeks \$1671.26 for DME dispensed to the EIP on DOS 12/18/23. Respondent denied applicant's claim based upon lack of medical necessity according to the 1/17/24 peer review of Shruti Patel, MD. Applicant submits a 4/23/24 rebuttal from

Drora Hirsch, MD The DME was ordered following an initial evaluation by Satchell-Lee Tyrell, NP.

4. Findings, Conclusions, and Basis Therefor

I have completely reviewed all timely submitted documents contained in the ADR Center record maintained by the American Arbitration Association and considered all oral arguments. No additional documents were submitted by either party at hearing. No witnesses testified at hearing.

ANALYSIS

Applicant has established its prima facie entitlement to reimbursement for no fault benefits based upon the submission of a properly completed claim form setting forth the amount of the loss sustained, and that payment is overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD 3d 742, (2nd Dept. 2004). Westchester Medical Center v. Lincoln General Ins. Co., 60 AD 3d 1045 (2nd Dept. 2009).

The burden now shifts to respondent to establish a lack of medical necessity with competent medical evidence which sets forth a clear factual basis (specifics of the claim) and medical rationale for denying the claim. Citywide Social Work and Psych Services, PLLC v. Allstate, 8 Misc. 3d 1025A (2005); Healing Hands Chiropractic v. Nationwide Assurance Co., 5 Misc. 3d 975 (2004). Respondent must offer sufficient and credible medical evidence that addresses the standards in the applicable medical community for the services and treatment in issue; explains when such services and treatment would be medically appropriate, preferably with understandable objective criteria; and why it was not medically necessary in the instance at issue.

In order to prevail, respondent's peer review must address all of the pertinent objective findings contained in applicant's medical evidence. It must then clearly explain why, notwithstanding those findings, the disputed service was inconsistent with generally accepted medical or professional practices. Amaze Medical Supply Inc. v. Eagle Insurance Co., 2 Misc. 3d 128(A), Citywide Social Work, et al. v. Travelers Indemnity Company, 3 Misc. 3d 608.

In Su MRI of Staten Island v. GEICO, AAA # 412009011671 (6/30/09), Arbitrator O'Grady found that an opinion offered by respondent is more likely to withstand the opinion of the treating medical provider when it includes:

1. Some reference to the standards in the applicable medical community for the services in treatment in issue.
2. An explanation as to when such services would be medically appropriate, preferably within understandable objective criteria; and

3. An explanation of why it is not medically necessary in the instance at issue.

Dr. Patel considered appropriate medical records, most significantly be 12/6/23 evaluation by NP Tyrell wherein the EIP complained of pain to the neck, mid and lower back and right shoulder, VAS 6 - 8/10. Straight leg raise was positive and cervical muscles were asymmetrical. Diagnosis included cervical radiculopathy, thoracolumbar region radiculopathy, lumbar radiculopathy, lumbar sacral region radiculopathy and pain in the right shoulder. The EIP was recommended to conservative care, medication and DME.

In accordance with medical literature, Dr. Patel opined that the standard of care for the treatment of these injuries is physical therapy and anti-inflammatory medication.

Dr. Patel acknowledges that many healthcare practitioners prescribed cervical support pillows as adjunctive therapy. The ergonomic pillow may affect neck extensive muscle endurance and CV angle in patients with cervical spondylosis although further studies are needed. Citing medical authority, he explains that the cervical pillow is considered part of therapeutic strategy for patients with cervical spondylosis but there is very little scientific evidence on the effectiveness of these pillows.

Cervical collars are appropriate for patients with suspected neck trauma or post-surgery. In whiplash patients, most studies suggest that early mobilization in activity is superior to immobilization and soft cervical collar use. Hard collars may play a role in conservative management of cervical radiculopathy.

With respect to the pressure mattress, mattress selection is subjective. Pressure mattresses are useful for people recovering from stroke or spinal cord injury when they are not able to move and pressure ulcers develop. Mattresses are specialized support is recommended for patients with high risk of developing pressure ulcers and other injuries. As to the bed board, the standard of care is to use a "transfer board" when a patient is unable to mobilize themselves. These are recommended for patients with below hip or knee amputation and who are currently on non-weight bearing status.

The LSO is not recommended in the prevention or treatment of low back pain. There is some evidence and management of compression fracture and instability. Lumbar instability is defined as degeneration of discs which leads to decrease in height and displacement of the disc from its anatomical position. There was no definitive evidence to support the use of the orthosis after surgery, and lumbar radiculopathy or other whiplash injuries. The standard of care for lumbar support is if there is compression fracture instability present. Although Dr. Patel seemingly includes the general back cushion in his discussion as to the efficacy of the LSO, there is no real commentary on its efficacy.

As to the thermophore in hot and cold packs Dr. Patel again noted that the standard of care and management of soft tissue injury includes conservative therapy such as physical therapy or chiropractic care along with NSAIDs. Conservative therapy includes heat, cold therapy, massage and acupuncture. Applying heat and cold packs to a sore

muscle has been done for decades in medicine and due to its low cost can be considered as treatment over the first few days. *Dr. Patel conceded the medical necessity of the hot and cold packs but determined that the thermophore was a deviation from the standard of care as the results can be achieved with similar over-the-counter devices.*

Lastly and with respect to the shoulder orthosis, it is not recommended as a primary treatment except following dislocation.

Respondent has failed to sustain its burden of proof respect to the cervical pillow, cervical collar, back cushion and thermophore. Dr. Patel acknowledges the efficacy of the cervical pillow and indicates that patients using the neck support pillow with exercises achieved a more favorable benefit. Likewise with respect to the cervical collar it may play a role in the conservative management of cervical radiculopathy. As to the general back cushion, Dr. Patel's peer review fails to offer any meaningful analysis as to its efficacy. Lastly, Dr. Patel's argument that the thermophore was medically unnecessary as results can be achieved with similar over-the-counter devices does not sustain respondent's defense that the thermophore was medically unnecessary.

Applicant's claims for the cervical pillow, cervical collar, back cushion and thermophore are awarded.

As to the bed board, dry pressure mattress, LSO and shoulder orthosis respondent established a reasonable factual basis and medical rationale with its expert opinion as to the medical necessity for the disputed treatment. Applicant must now meaningfully refer to or rebut the conclusions set forth in the peer review. Yklik, Inc. v. Geico Ins. Co., 2010 NY Slip Op 51336(u) (App Term 2nd, 11th, and 13th Jud Dist. 7/22/10).

According to Dr. Hirsch the bed board and mattress are necessary to provide support and allow the EIP to rest and recover. The mattress facilitates relaxation, minimizes pain, and enhances comfort.

With regard to the LSO Dr. Hirsch opines that instability due to fracture, dislocation, spondylolisthesis, ligament laxity outpost lumbar surgery are only a few of the conditions for which the devices may be warranted. There were positive findings on examination including positive objective orthopedic tests. The LSO was provided to allow the EIP to perform ADLs. They provide external force to control spinal positions, providing stabilization when soft tissues cannot. The LSO stabilizes the region and reduces pain preventing extreme movements that could lead to reinjury.

Lastly with respect to the shoulder orthosis, Dr. Hirsch explains that a shoulder orthosis is helpful in reducing discomfort and improving shoulder injury. The device holds up the shoulder while still allowing range of motion. It is needed for optimal arm health.

After careful consideration of the parties' submissions and the arguments at hearing I find Dr. Patel's arguments persuasive for the *bed board, dry pressure mattress and shoulder orthosis*. Dr. Hirsch's rebuttal is vague, conclusory and fails to successfully correlate the necessity of these items to this particular EIP. See, James Ligouri

Physician, PC v. State Farm Mutual Automobile Insurance Company, 2007 NY Slip op 50465 (U) (NY Dist. Court 2007). There is nothing in the records to suggest that the EIP had difficulty sleeping on his current mattress. There was no indication that she was bedridden and at risk for bedsores. Dr. Hirsch's rebuttal provides a discussion as to the way the bed board and foam mattress work.

As to shoulder orthosis, right arm pain without any objective clinical findings is insufficient to refute Dr. Patel's conclusion that the recommendation was a deviation from generally accepted medical practice. *Applicant's claims for the bed board, mattress, and shoulder orthosis are denied.*

I agree with Dr. Hirsch that the LSO was medically necessary to facilitate healing and allow other therapeutic modalities to work while the EIP participates in ADLs. *The claim for the LSO is awarded.*

Total award: \$1305.21

Interest: Applicant is awarded interest in accordance with 11 NYCRR§65 - 3.9 (a)-(f). Accordingly, interest is calculated at a rate of 2% per month, calculated on a pro rata basis using the 30 day month. A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. If an applicant does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form, or payment of benefits calculated pursuant to Department of Financial Services Regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken. 11 NYCRR §65 - 3.9 (c). The Superintendent and the New York Court of Appeals have interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Services PC v. State Farm Mutual Automobile Insurance Company, 12 NY 3d 217 (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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	HYGGE Medical Supplies Corp.	12/18/23 - 12/18/23	\$1,671.26	Awarded: \$1,305.21
Total			\$1,671.26	Awarded: \$1,305.21

B. The insurer shall also compute and pay the applicant interest set forth below. 03/14/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from 3/14/24, the date of filing, on the amount awarded of \$1305.21 at a rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR 65 - 3.9 (e).

C. Attorney's Fees

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

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4.6(d) (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(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 Nassau

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

08/16/2024
(Dated)

Rhonda Barry

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:
40bb0d1b7428fc2a1a7fcdc3dd4764b3

Electronically Signed

Your name: Rhonda Barry
Signed on: 08/16/2024