

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Remodel Net Services Inc.  
(Applicant)

- and -

American States Insurance Company  
(Respondent)

AAA Case No. 17-24-1345-2048

Applicant's File No. GM24-760656

Insurer's Claim File No. 0560449960004

NAIC No. 19704

**ARBITRATION AWARD**

I, Robyn McAllister, 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: Assignor

1. Hearing(s) held on 08/21/2024  
Declared closed by the arbitrator on 08/21/2024

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

Virginia Scala, Claims Representative from American States Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,264.37**, 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

Whether Respondent properly denied Applicant's claim for providing various medical supplies to Assignor (BA), a 48 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on February 5, 2024, based on a peer review by Dr. Ajendra Sohal.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1264.37 for providing a mattress, bed board, cold and hot pack, heating pad, LSO, lumbar cushion, massager, placement belt and infrared lamp on February 10, 2024 to Assignor (BA), a 48 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on February 5, 2024. Respondent timely denied Applicant's claim based on a peer review dated March 8, 2024 by Dr. Ajendra Sohal.

This decision is based on the oral arguments of counsel or other representative at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged receipt of Applicant's bill. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the medical supplies were not medically necessary. I agree. I was persuaded by the peer review report by Dr. Sohal, submitted by Respondent in support of its denial.

In order to support a defense of lack of medical necessity, the respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." *See, Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Dist. 2014). It is the respondent's burden to demonstrate lack of medical necessity, which, if established, shifts the burden of persuasion to the applicant. *See Bronx Expert Radiology, P.C. v. Travelers Ins. Co.*, 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006); *A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11<sup>th</sup> Dist. 2007).

Furthermore, a respondent's peer review must set forth more than just a conclusory or basic recitation of the expert's opinion. It is well-settled that a peer review is deficient when it fails to set forth the generally accepted medical practice and how the provider deviated from those standards. *See Elmont Open MRI & Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co.*, 23 Misc.3d 1110(A)(Dist. Ct. Nassau Co. 2009); *Nir v. Allstate*, 7 Misc.3d 544 (Civ. Ct. Kings Co. 2005).

Dr. Sohal noted that "According to the note dated 02/08/2024 by John J. McGee, D.O., the claimant presented with complaints of pain in the neck and low back. Neck pain radiated to arms and shoulders and low back pain radiated to legs. Pain was rated as 7/10. No medication use was reported. Physical examination of the cervical spine revealed tenderness, muscle spam and decreased range of motion. Spurling's was positive. Thoracic spine revealed tenderness. Lumbar spine revealed tenderness, muscle spam and decreased range of motion. Straight leg raise test at 15 degrees was positive.

Neurological examination revealed cranial nerves II-XII are intact, motor strength was 5/5, deep tendon reflexes (DTR's) were 2/4, and sensation was normal. Clinical impression was cervical sprain/strain; cervical radiculopathy; cervical disc displacement; thoracic sprain/strain; lumbar sprain/strain; lumbar radiculopathy; and lumbar disc displacement. The claimant was recommended physical therapy and chiropractic care; EMG/NCV testing of the upper and lower extremities; MRI testing of the cervical, thoracic and lumbar spine; referred to orthopedic and pain management; trigger point injection; Rx prescribed: Pennsaid 2% solution, Lidocaine ointment 5% and Cyclobenzaprine 7.5 mg; DME ordered: game-ready, SAM, cervical collar, cervical pillow, LSO, lumbar cushion, bed board, egg crate mattress, orthopedic massager chair, EMS unit 4 leads, TENS/EMS placement belt, infrared lamp and massager; and follow-up visit was indicate."

Dr. Sohal discussed each of the supplies and cited literature questioning the efficacy of the devices and asserted that their use in addition to the prescribed multi-modality treatment was unnecessary. Dr. Sohal concluded that "The conventional treatment including physical therapy, chiropractic care, acupuncture treatment, medication, or injections continues to be the mainstream of the treatment. Exercises or various mobilization and manipulation techniques are sometimes used. Dry mattress, bed board, cold/hot pack, heating pad, LSO, lumbar cushion, massager, placement belt and infrared lamp in spite of promising claims are still not the standard of care for these conditions and should not be deemed to be medically appropriate.

I find that Dr. Sohal's peer review was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to rebut Dr. Sohal's assertions. *See A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co., supra.*

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial report by John McGee, D.O. and prescription by Stanislav Leshchinskiy. I was not persuaded by the medical evidence that the supplies were warranted.

Applicant did not submit a rebuttal to the peer review. Dr. McGee's form list of supplies he may or may not prescribe if indicated was less than persuasive. All of the supplies at issue were prescribed five days after the accident before Assignor had an opportunity to benefit from any prescribed conservative treatment. Nothing in the evidence refuted Dr. Sohal's assertion that this is not the standard of care. Therefore, I credit Dr. Sohal's opinion and find that Applicant failed to satisfy its burden.

Accordingly, 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 Westchester

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

08/29/2024  
(Dated)

Robyn McAllister

**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:**  
bd04231f2c88c5f313e068ec2532deee

### Electronically Signed

Your name: Robyn McAllister  
Signed on: 08/29/2024