

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Akiva Ortho Supply LLC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1295-1530

Applicant's File No. DK22-318851

Insurer's Claim File No. 0686269234

NAIC No. 29688

ARBITRATION AWARD

I, Elyse Balzer, 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: SS

1. Hearing(s) held on 08/07/2024
Declared closed by the arbitrator on 08/07/2024

Evan Polansky from Korsunskiy Legal Group P.C. participated virtually for the Applicant

Peggy Gizzarelli from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$756.03**, 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 arbitration seeks payment for an orthopedic car seat provided on 11/14/22 to the 26-year-old female eligible injured person SS for injuries sustained as a front seat passenger in a vehicle involved in an accident on 9/23/22.

The issue is whether respondent has proven the lack of medical necessity of the orthopedic car seat based on a peer review by Dr. Kevin Portnoy, DC.

The parties agreed that the above issue was the only issue in contention.

Respondent did not raise any issue of exhaustion and did not present any proof of exhaustion.

Respondent did not raise any issue of fee schedule to contradict applicant's fees and did not present any proof about fee schedule

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via Zoom, as all arbitration hearings have been conducted telephonically since March 15, 2020 and via Zoom since February 2021 due to the COVID-19 pandemic.

4. Findings, Conclusions, and Basis Therefor

On 11/14/22, applicant provided an orthopedic car seat to SS.

Applicant presented a prescription signed by Dr. Demetrios Karakizis, DC, dated 10/31/22, which prescribed an orthopedic car seat.

This exact same prescription by Dr. Karakizis was presented in a prior case where another orthopedic car seat was dispensed by a different medical provider. I decided that claim in: **Prompt Medical Group Inc.**, AAA Case No. 17-23-1290-0317 (award 2/8/24).

In that prior award, I wrote:

This arbitration seeks payment for seven (7) bills for durable medical equipment (DME) dispensed on 10/31/22 and on 11/29/22 to the 26 year old female eligible injured person SS for injuries sustained as a front seat passenger in a vehicle involved in an accident on 9/23/22.

The issue is:

Has respondent proven the lack of medical necessity of DME based on peer reviews by Dr. Kevin J. Curley, M.D. and Dr. Kevin S. Portnoy, DC.

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On 10/31/22 applicant dispensed these DME to SS and issued two bills:

Cervical pillow

Cervical multiple post collar

Lambar (sic) sacral orthosis sag

General use back cushion

Bed board

Egg crate mattress

Electric heat pad moist

Orthopedic car seat

Shoulder vest type

Water circulating heat pad with pump

Dr. Phyllis Gelb, MD had ordered the cervical pillow, lumbar cushion, lumbar sacral support, arm sling, bed board, egg crate mattress, cervical collar, thermal moist heat pad, water circulating heat w/pump and orthopedic car seat on 10/6/22 at the initial visit (see infra).

Dr. Demetrios Karakizis, DC had ordered the orthopedic car seat on 10/31/22.

Respondent paid for the "electric heat pad moist" at the amount billed.

Respondent denied payment for the remainder of the above listed DME ordered by Dr. Gelb based on a peer review, dated 1/25/23, by Dr. Kevin J. Curley, MD.

Respondent denied payment for the orthopedic car seat, ordered by Dr. Karakizis, DC, based on a peer review, dated 1/25/23, by Dr. Kevin S. Portnoy, DC

On 11/29/22 applicant dispensed these DME to SS and issued five bills:

EMS belt

EMS unit/4 lead

Infrared lamp (heat lamp w/ste)

Massager

Hydrotherapy whirlpool

Shoulder orthosis abduct

Shoulder orthosis abduct

LSO APL control, custom fi

Cervical traction set

Dr. Gelb had also ordered the infra-red lamp, personal massager, EMS belt, EMS unit, the whirlpool, the left shoulder orthosis custom fit, and the right shoulder orthosis custom fit on 11/8/22.

Respondent denied payment for the above listed DME ordered by Dr. Gelb based on a peer review, dated 1/25/23, by Dr. Kevin J. Curley, MD.

Dr. Demetrios Karakizis, DC had ordered the LSO w/ APL control custom and the cervical traction w/pump on 11/8/22.

Respondent denied payment for the above listed DME ordered by Dr. Karakizis DC based on a peer review, dated 1/25/23, by Dr. Kevin S. Portnoy, DC

Applicant submitted a rebuttal, dated 5/8/23, from its expert, Dr. Lubov Klimova, MD to Dr. Portnoy's peer review regarding the DME which had been ordered by Dr. Karakizis, DC.

Applicant submitted a rebuttal, dated 5/8/23, from its expert, Dr. Lubov Klimova, MD to Dr Curley's peer review regarding the DME which had been ordered by Dr. Gelb, MD.

Respondent submitted a peer review addendum, dated 6/29/23, from Dr. Portnoy.

Respondent submitted a peer review addendum, dated 7/1/23, from Dr. Curley.

It is noted that neither Dr. Karakizis nor Dr. Gelb submitted any opinion regarding why they prescribed any of the nineteen (19) items of DME dispensed on 10/31/22 and 11/29/22.

The medical records submitted by respondent show:

On 9/28/22 SS was seen at Balanced Channels Acupuncture PC

On 10/3/22 SS had an initial chiropractic exam with Dr. Karakizis DC of 2354 Chiropractic PC which showed that SS had been a restrained front seat passenger, who did not lose consciousness, when her vehicle was rear ended. SS' past medical history was positive for left shoulder surgery. Chiropractic treatment, cervical & lumbar MRIs and a physician referral were ordered.

On 10/6/22 SS was examined at Avenue Medical Care PC by Dr. Gelb, MD. SS' past medical history was for a "MVA 2017 completely resolved s/p arthroscopic sx." Physical therapy, prescription medications and multiple MRIs (brain; cervical spine; lumbar spine; thoracic spine; bilateral shoulders) were ordered. Dr. Gelb ordered a "wearable PEMF device" (November 2022).

On 10/10/22 SS was examined by Cindy-Anne Williams, NP who performed dry needling.

On 10/10/22 SS was seen by Dr. Sadia Shah DPM at "NF Queens."

On 10/10/22 SS received "biowave percutaneous electrical nerve stimulation (PENS) from Dr. John Strobeck, MD of JS River Medical Care.

On 10/10/22 SS had a cervical MRI and a lumbar MRI at Stand Up MRI of Bensonhurst PC.

On 10/10/22 and on 10/24/22 SS received "radial pressure wave therapy" on her spine and shoulders from Richard Fofie, PA-C at JPB Todt Hill Medical Care PC.

On 10/13/22 SS had a physical therapy evaluation at Unity Care Physical Therapy PC.

On 10/19/22 SS had an initial neurological consult at Terrace Medical Care PC with Dr. Yong Chi, MD who performed upper EMG/ NCV testing on that date.

On 10/24/22 SS was seen by Jasoda Dhupan, NP who performed dry needling.

On 10/24/22 SS had ultrasounds of the right shoulder, left shoulder and the spine with Dr. Diana Vavikova DC.

On 10/25/22 SS was seen by Kunti Hanif, PA of Total Anesthesia Provider PC.

On 10/26/22 SS had a computerized range of motion & muscle testing.

On 10/26/22 SS had a thoracic MRI, a right shoulder MRI and a left shoulder MRI at Stand Up MRI of Bensonhurst PC.

On 11/7/22 Dr. Gelb referred SS for videonystagmography (VNG) & transcranial doppler testing. It was performed on that date and interpreted by Dr. Sergey Zhivotenko.

On 11/7/22 SS had upper & lower extremity sympathetic skin response studies (SSR) with Dr. Sergey Zhivotenko.

On 11/7/22 SS was seen by Anat Abeckaser, PA who performed dry needling.

On 11/7/22 SS received "radial pressure wave therapy" at JPB Todt Hill Medical Care PC.

On 11/14/22 SS was seen by Daniel Ramessar, PA who performed dry needling.

On 11/14/22 SS received "radial pressure wave therapy" at JPB Todt Hill Medical Care PC.

On 11/14/22 SS had a followup chiropractic exam with Dr. Karakizis, DC.

On 11/21/22 SS was seen by Johanne Hilarire, NP who performed dry needling.

On 11/21/22 SS received "radial pressure wave therapy" at JPB Todt Hill Medical Care PC.

On 11/30/22 SS was seen by Kunti Hanif, PA of Total Anesthesia Provider PC.

On 12/1/22 SS had NIOSH static strength testing.

On 12/15/22 SS saw Dr. Laxmidhar Diwan, MD of Queens Arthroscopy & Sports Medicine.

Commencing on 9/28/22 SS received acupuncture treatment at Balanced Channels Acupuncture PC.

Commencing on 10/10/22 SS received chiropractic care from Dr. Karakizis DC.

Commencing on 10/14/22 SS received physical therapy at Unity Care Physical Therapy PC.

After carefully reviewing the proof I find that respondent's experts have stated correct & accurate factual analyses of SS' treatment and condition, have stated the generally accepted standards of care for the prescription and use of the disputed DME and have proven that the denied DME were dispensed in deviation from generally accepted standards of care. None of the conditions for which these DME were warranted were exhibited or found in SS.

The Appellate Term, 1st Department has held that a sworn peer review report, which sets forth a factual basis and medical rationale, demonstrated a prima facie case for the

defense. *Innovative MR Imaging PC v. Praetorian Ins. Co.*, 2013 NY Slip Op 50264 (U) (2013).

Applicant's expert, Dr. Klimova, wrote lengthy rebuttals which contained general ideas about the use of each DME but which did not convincingly show how each item of DME was necessary to treat SS. The rebuttals attempted to address the points contained in the peer reviews but failed to refute and rebut each point meaningfully and adequately.

Based on the above, I find that respondent has proven, by a fair preponderance of the credible evidence, the lack of medical necessity for all of the disputed DME and that applicant has failed to rebut or refute respondent's showing.

Applicant's claim is denied.

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In this case, I find that once again Dr. Curley's peer review carries respondent's burden of proof to show the lack of medical necessity of the second orthopedic car seat provided by applicant in addition to the other orthopedic car seat provided by Prompt Medical Group, Inc.

This claim appears to be a duplicate claim.

In addition, I find that the rebuttal presented by this applicant from Dr. Michael Silver, applicant's expert, is insufficient to meaningfully address all the salient points in the peer review.

The peer review showed that an orthopedic car seat was dispensed in deviation from generally accepted standards of care.

Based on the above, applicant's claim is denied.

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

09/05/2024

(Dated)

Elyse Balzer

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:
f9b880d1ffad13f6aec7ea636d9e8e8d

Electronically Signed

Your name: Elyse Balzer
Signed on: 09/05/2024