American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Healing Touch Supply, Inc. (Applicant)	AAA Case No.	17-24-1345-3008
	Applicant's File No.	3203549
- and -	Insurer's Claim File No.	0354222680101113
	NAIC No.	35882
Geico Insurance Company (Respondent)		

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 08/22/2024
   Declared closed by the arbitrator on 08/22/2024

   Neda Melamed, Esq. from Israel Purdy, LLP participated virtually for the Applicant

   Justin Addison, Claims Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$517.63**, 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 a cervical traction unit to Assignor (ECB), a 61 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on January 19, 2024, based on a peer review by Bonnie Corey, D.C.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of $517.63 for providing a cervical traction unit on February 16, 2024 to Assignor (ECB), a 61 year-old male driver, in connection with treatment of injuries sustained in a motor vehicle accident on January 19, 2024. Respondent timely denied Applicant's claim based on a peer review dated April 5, 2024 by Bonnie Corey, D.C.

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. Corey, 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 & 11th 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. Corey noted that "Chiropractic treatment was initiated with Jennifer Honor, DC on 2/5/24. He is being treated for subjective complaints of neck pain radiating to the left, left shoulder pain, mid back pain, and low back pain. Exam findings revealed the following acute soft tissue musculoskeletal findings including orthopedic testing was listed as being positive with no documented reproducible radicular pain, reduced spinal ranges of motion, and subluxations. The claimant is concurrently treating with physical therapy which already consist of various in office modalities."

Dr. Corey asserted that "The standard of care for post-traumatic soft tissue injuries sustained in a motor vehicle accident is conservative treatment as what was prescribed. Prescribing medical equipment for home use while the claimant is receiving in-office treatment consisting of chiropractic treatment is excessive."

She opined that "There was no medical necessity for a cervical traction device. The claimant's physical findings that are presented in the medical records are not consistent with any reasonable concern for the need for a cervical traction equipment. There was no indication of any medical documentation that relates to the specific need for durable medical equipment, especially from a chiropractic standpoint."

She stated that "there is no evidence the claimant underwent a trial period with the traction unit to determine the effectiveness of cervical traction. It should also be noted that the use of this modality for home use is not standard of care. The treating chiropractor could have achieved the desired goals with chiropractic adjustments and exercises."

Dr. Corey further noted according to one article, "the additional of mechanical intermittent traction does not appear to improve outcomes for patients with cervical radiculopathy who are already receiving manual therapy and exercise." She added that another article concluded that "The results of this study show that the indiscriminate use of an air-inflatable home neck traction device may aggravate symptoms."

I find that Dr. Corey's peer review was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to rebut Dr. Corey'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 and prescription by Jennifer Honor, D.C., MRI report, and rebuttal to the peer review dated July 5, 2024 by Dr. Joseph Perez. I was not persuaded by the medical evidence that the cervical traction unit was warranted.

As noted by Dr. Corey, Dr. Honor initially evaluated Assignor on February 5, 2024. Her initial report failed to include any diagnoses and the fill in the blanks report noted subjective complaints and soft tissue injuries to the neck and back. Dr. Honor's report did not mention the cervical traction unit and nothing in the report or prescription explained why the supply was medically necessary. The MRI report of the cervical spine only noted findings consistent with spasm and a bulging disc at C5-C6.

Dr. Perez was not a chiropractor and was not a treating physician. Therefore, I find his opinion regarding a chiropractic standard of care was not persuasive. Furthermore, while he generically touted the benefit of cervical traction, he failed to offer a compelling reason this patient would require a home cervical traction unit after initial evaluation by Dr. Honor before Assignor had the opportunity to benefit from the prescribed conservative treatments.

In addition, nothing in the records explained why Assignor needed a home cervical traction unit when the chiropractic treatment notes indicated that Dr. Honor was not performing traction in-office.

While Applicant argued that the cervical traction unit was necessary since the EMG/NCV testing report revealed cervical radiculopathy at C6-C7 on the left, that test was performed on February 21, 2024, nine days after Dr. Honor prescribed the cervical traction unit, and five days after Assignor received the supply, and thus, did not factor into Dr. Honor's prescribing the device.

I find that Dr. Perez's rebuttal did not meaningfully refute the conclusions set forth in the peer review report. *See High Quality Medical, P.C. v. Mercury Ins. Co.*, 26 Misc.3d 145(A) (App. Term 2d, 11th & 13th Dists. 2010). Therefore, I find that Applicant failed to satisfy its burden and that Respondent properly denied Applicant's claim.

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.

09/06/2024
(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:
e6c4783cfdfa1d242437bbf9eb3b4b89

Electronically Signed

Your name: Robyn McAllister
Signed on: 09/06/2024