

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NY Manners Med Supply Inc.
(Applicant)

- and -

Allstate Insurance Company
(Respondent)

AAA Case No. 17-23-1310-3137

Applicant's File No. BT23-245321

Insurer's Claim File No. 0702716192
SKV

NAIC No. 19232

ARBITRATION AWARD

I, Lester Hill, 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 09/13/2024
Declared closed by the arbitrator on 09/13/2024

James DiCarlo from The Tachiev Law Firm, P.C. participated virtually for the Applicant

Olga Gromyko from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,814.00**, 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

Was the Pain-Away laser device provided to the EIP on a rental basis from March 15, 2023 through April 25, 2023 medically unnecessary based upon the peer reports by Dr. Robert Sohn dated May 4, 2023 and May 24, 2023? The 63-year-old male EIP was involved in a motor vehicle accident on February 13, 2023 and received treatment for injuries to the neck, low back, and right knee.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the Pain-Away laser device provided to the EIP on a rental basis from March 15, 2023 through April 25, 2023 was medically unnecessary.

The basis of the respondent's timely denial is the peer reports by Dr. Robert Sohn dated May 4, 2023 and May 24, 2023.

I have reviewed the documents contained in the electronic case folder as of September 13, 2024. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on September 13, 2024.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med., P.C.* 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. *Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co.*, 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on February 13, 2023. The EIP presented to Dr. Gonzalez on February 15, 2023 with complaints of pain in the neck, low back, and right knee. The examination reported reduced range of motion of the cervical and lumbar spine with positive orthopedic testing and reduced range of motion with swelling and crepitus in the right knee. The EIP presented to Dr. Kim on February 15, 2023 with complaints of pain in the neck, low back, and right knee. The examination reported decreased range of motion of the cervical and lumbar spine and positive orthopedic testing for the cervical and lumbar spine. The EIP was placed on a course of conservative treatment and prescribed lidothal patches, ibuprofen, and esomeprazole, which were provided to the EIP on February 22, 2023. The EIP was also prescribed a Pain-Away laser device which was provided to the EIP on a rental basis from March 15, 2023 through April 25, 2023. The EIP underwent MRIs of the cervical and lumbar spine on March 21, 2023 which reported disc herniation some C4 through C7 and L4 through S1. The EIP underwent electrodiagnostic testing of the lower extremities on April 13, 2023 which reported evidence of lumbar radiculopathy.

Dr. Sohn states that the laser device was medically unnecessary. He states that it was prescribed two days after the accident and that the was not a sufficient course of conservative treatment to reduce the EIP's symptomology. He states that the laser device was prescribed prematurely. He states that the EIP was not administered laser therapy in the in office setting to determine if this type of treatment was efficacious for this EIP before prescribing the home unit.

Dr. Aristide Burducea submitted a rebuttal asserting that the laser device was medically necessary. He states that this device administers low level laser therapy which has been demonstrated to reduce inflammation, reduce edema and promote healing. He states that

it causes vasodilation and results in relaxation of the smooth muscles, thereby producing the therapeutic effect. He cites several research articles attesting to the efficacy of low-level laser therapy for musculoskeletal conditions.

I find the respondent has not demonstrated by sufficient factual basis and medical rationale that the Pain-Away laser device was medically unnecessary. With respect to the argument that the EIP should have been prescribed laser therapy in the in office setting prior to providing a device for home use, there is no evidence whether Dr. Kim was equipped to provide low level laser therapy. I find the rebuttal persuasive that low level laser therapy has been demonstrated to be effective for the treatment of musculoskeletal conditions. I am unpersuaded by the peer report that the EIP should undergo a course of conservative treatment before use of laser therapy. I find the rebuttal persuasive that the laser therapy in addition to the other conservative treatments the EIP was administered (chiropractic, physical therapy and acupuncture) provided a comprehensive course of treatment designed to reduce the EIP's symptomology and there was no credible reason to delay the administration of laser therapy.

Accordingly, applicant's claim is granted 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 applicant is AWARDED the following:

A.

Medical	From/To	Claim Amount	Status
	NY Manners Med Supply	03/15/23 -	\$1,407.00 Awarded:

	Inc.	04/04/23		\$1,407.00
	NY Manners Med Supply Inc.	04/05/23 - 04/25/23	\$1,407.00	Awarded: \$1,407.00
Total			\$2,814.00	Awarded: \$2,814.00

B. The insurer shall also compute and pay the applicant interest set forth below. 08/04/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is awarded commencing with the filing of the AR1 at a rate of 2% per month, simple, and ending with the payment of the claim.

C. Attorney's Fees

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

Attorney fees are awarded pursuant to 11 NYCRR 65 - 4.6(e) at a rate of 20% of the awarded claim, including interest, to a maximum of \$1360.00.

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

09/23/2024
(Dated)

Lester Hill

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:
6cff042d7d20384ba5710a9c98a41b26

Electronically Signed

Your name: Lester Hill
Signed on: 09/23/2024