

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

HYGGE Medical Supplies Corp.
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1342-1762

Applicant's File No. GM24-773384

Insurer's Claim File No. 233807866

NAIC No. 14800

ARBITRATION AWARD

I, Deepak Sohi, 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 09/23/2024
Declared closed by the arbitrator on 09/23/2024

Jay Koo from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Erin Ferrone from Progressive Casualty Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,301.10**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bill. The parties also stipulated that Respondent's NF-10 denial of claim form was timely issued.

3. Summary of Issues in Dispute

This arbitration arises out of durable medical equipment (DME), specifically a PEMF device/osteogenic stimulator including waterproof tape

provided to the EIP, a 40-year-old male, who was involved in a motor vehicle accident on 11/26/2023. Applicant is seeking reimbursement for the PEMF device/osteogenic stimulator provided to the EIP on date of service 12/14/2023. Respondent denied reimbursement for the PEMF device/osteogenic stimulator including waterproof tape based on an Independent Medical Peer Review by Dr. Ronald L. Mann, MD, dated 2/2/2024.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

MEDICAL NECESSITY

PEMF/OSTEOGENIC STIMULATOR

DATE OF SERVICE 12/14/2023

If an insurer asserts that a medical test, treatment, supply or other service was not medically necessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [App Term, 2nd & 11th Jud. Dists. 2003]; Kings Medical Supply Inc. v. Country Wide Insurance Company, 783 N.Y.S. 2d at 448 & 452; Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128 [App Term, 2nd & 11th Jud. Dists. 2003]).

In support of its denial, Respondent submits an Independent Medical Peer Review report by Dr. Ronald L. Mann, MD, dated 2/2/2024. Based on his review of the medical records, Dr. Mann provides a summary of the EIP's history and then provides his analysis regarding the lack of medical

necessity of the PEMF device/osteogenic stimulator including waterproof tape provided on date of service 12/14/2023. After his review of the available documentation, Dr. Mann determined that the PEMF device/osteogenic stimulator provided was not medically necessary. In his report Dr. Mann states:

Based on the review of the available medical records, I have concluded that the Osteogenesis stimulator, electrical, non-invasive, other than spinal applications with Waterproof tape provided to the claimant on 12/14/2023 by Hygge Medical Supplies Corp., and Lidocaine Ointment 5% provided to the claimant on 12/22/2023, by Pain Relief Rx Inc., were not medically necessary, for this claimant.

The claimant is a 39-year-old male who was involved in a motor vehicle accident on 11/26/2023. The claimant sustained multiple alleged injuries, including injuries to the neck, lower back, and left knee. On 11/28/2023, the claimant came under the care of Nick Nicoloff, P.A., for the initial evaluation, with chief complaints of pain in the neck, lower back, and left knee, and was recommended for conservative treatments, referred for diagnostic studies, and prescribed medications including Lidocaine Ointment 5%, and DMEs including Osteogenesis stimulator, electrical, noninvasive, other than spinal applications with Waterproof tape. On 12/14/2023, the claimant was provided an Osteogenesis stimulator, electrical, noninvasive, other than spinal applications with Waterproof tape, by Hygge Medical Supplies Corp. On 12/22/2023, the claimant was provided Lidocaine Ointment 5%, by Pain Relief Rx Inc.

Regarding Osteogenesis stimulator, electrical, non-invasive, other than spinal applications with Waterproof tape:

A non-spinal electrical osteogenesis stimulator providing a Pulsed Electromagnetic Field (PEMF) was not medically necessary for the soft tissue injuries encountered in this case's motor vehicle collision. Doctors utilize PEMF to treat neuropathic pain, bone fractures, and post-surgical tissue repair, none of which this claimant had. Unless there is a fracture or surgery with the danger of non-union, a simulator is not necessary. The claimant had no surgery or fractures. The accident occurred on 11/26/2023, and the stimulator was

delivered on 12/14/2023. Physical therapy and chiropractic care should have been provided to the claimant. It is unclear why the claimant was given the DME in the absence of any risk factors or indicators. As a result, the osteogenesis stimulator served no medicinal purpose.

Adequate physical therapy sessions and medications are among the conservative treatments that would be the standard of care for traumatic strain/sprain injuries. Furthermore, there is no evidence that these devices are superior to or more successful than the current standard of care, which includes oral medications and formal physical therapy for three to six months.

"Electrical stimulation is a common adjunct used to promote bone healing; its efficacy, however, remains uncertain. Our systematic review and meta-analysis of eligible randomized controlled trials found moderate quality evidence for electrical stimulation in reducing patient-reported pain and radiographic nonunion or persistent nonunion. Low-quality functional outcome data showed no difference with electrical stimulation compared to sham treatment" (Aleem, I. S., Aleem, I., Evaniew, N., Busse, J. W., Yaszemski, M., Agarwal, A., Bhandari, M. (2016). *Efficacy of Electrical Stimulators for Bone Healing: A Meta-Analysis of Randomized Sham-Controlled Trials*; *Scientific Reports*, 6(1); doi: 10.1038/srep31724)

"In another study, Hattapoglu *et al.*, [13] investigated the efficiency of PEMF therapy on pain, disability, psychological state, and quality of life in patients with cervical disc herniation. They were unable to demonstrate a significant improvement in any of the parameters at three weeks after treatment. The current study demonstrates that the addition of PEMF therapy to a conventional physical therapy program does not provide a superior efficacy in reduction of pain and functional limitation in patients with chronic non-specific neck pain. When applied as an adjunct to a conventional physical therapy program, PEMF therapy is not superior in improving pain and functional limitation." (Karakas M, GE& H. *Effectiveness of pulsed electromagnetic field therapy on pain, functional status, and quality of life in patients with chronic non-specific neck pain: A prospective, randomized-controlled study*. *Turk J Phys Med Rehabil*. 2020 May

18;66(2):140-146. doi: 10.5606/tftrd.2020.5169. PMID: 32760890; PMCID: PMC7401674.)

It is my opinion that there is no medical necessity for any future use of this Osteogenesis stimulator, electrical, noninvasive, other than spinal applications with Waterproof tape including repeated refills.

I find that Dr. Mann has stated a factual basis and medical rationale for his determination that the PEMF device/osteogenic stimulator including waterproof tape was not medically necessary. Dr. Mann summarizes the generally accepted standard, supports that standard with citations to medical articles, and applies that standard to this particular EIP. Thus, the burden has shifted to the Applicant, who bears the ultimate burden of persuasion.

With regard to the PEMF device/osteogenic stimulator, Dr. Mann stated, "A non-spinal electrical osteogenesis stimulator providing a Pulsed Electromagnetic Field (PEMF) was not medically necessary for the soft tissue injuries encountered in this case's motor vehicle collision. Doctors utilize PEMF to treat neuropathic pain, bone fractures, and post-surgical tissue repair, none of which this claimant had. Unless there is a fracture or surgery with the danger of non-union, a simulator is not necessary. The claimant had no surgery or fractures. The accident occurred on 11/26/2023, and the stimulator was delivered on 12/14/2023. Physical therapy and chiropractic care should have been provided to the claimant. It is unclear why the claimant was given the DME in the absence of any risk factors or indicators. As a result, the osteogenesis stimulator served no medicinal purpose."

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed]], Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147 [A], 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131 [A], 824 N.Y.S.2d 759, 2006 NY Slip Op 51871 (U) 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06)].

In opposition to the Respondent's peer review report and in support of its claim, the Applicant submits a rebuttal by Dr. Drora Hirsch, MD, dated 6/12/2024. Dr. Hirsch did not treat the EIP herein and is merely giving her opinion. Dr. Hirsch disagreed with Dr. Mann and stated that the PEMF device/osteogenic stimulator provided herein was medically necessary. In response to the rebuttal by Dr. Hirsch, Respondent submits an addendum by Dr. Mann, dated 7/16/2024.

After careful consideration of the documents submitted and the parties' oral arguments at the hearing, I find in favor of Respondent. The prescription for the PEMF device/osteogenic stimulator including waterproof tape is dated 11/28/2023. The prescription was written by Mr. Nick Nicoloff, PA, after an initial evaluation, dated 11/28/2023 by Ms. Caroline Boubert, PA-C. Clearly, the PEMF device/osteogenic stimulator was ordered upon the initial evaluation by Ms. Boubert, prior to the performance of a significant course of conservative treatment. There is no evidence that the EIP was seen or treated by Mr. Nicoloff. In her rebuttal, Dr. Hirsch failed to address why the EIP was prescribed this durable medical equipment so early in his course of treatment.

In order for an applicant to prove that the disputed expense was medically necessary, it must 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 2d, 11th & 13th Dists. July 22, 2010); High Quality Medical, P.C. v. Mercury Ins. Co., 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009). A letter of medical necessity sworn to by a provider who had examined assignor, along with other medical documentation, may be sufficient to rebut the peer review and establish the medical necessity of the services rendered. See Quality Psychological Servs., P.C. v. Mercury Ins. Group, 2010 NY Slip Op 50601(U) (App Term 2d Dept., April 2, 2010). The provider's evidence needs to meaningfully address or discuss the peer reviewer's determinations. See B.Y., M.D., P.C. v. Progressive Casualty Ins. Co., 2010 N.Y. Slip Op. 50144(U) (App. Term 9th & 10th Dists. Jan. 28, 2010); Innovative Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op. 52321(U) (App. Term 2d, 11th & 13th Dists., Nov. 13, 2009); Pan Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 51495(U) (App

Term 2d Dept., July 9, 2009). Here, the rebuttal and records in submission are insufficient to rebut the findings of the peer review and addendum.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Respondent. Consequently, the Applicant's claim for the PEMF device/osteogenic stimulator including waterproof tape provided on date of service 12/14/2023 is hereby denied with prejudice.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 Nassau

I, Deepak Sohi, 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)

Deepak Sohi

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:
06a72eb443d27a61f5bf053c718aa08e

Electronically Signed

Your name: Deepak Sohi
Signed on: 09/23/2024