

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kuman Medical Supply Inc.  
(Applicant)

- and -

Integon National Insurance Company  
(Respondent)

AAA Case No. 17-24-1336-8455

Applicant's File No. 9012511

Insurer's Claim File No. 9XINY07107-02

NAIC No. 29742

**ARBITRATION AWARD**

I, Ioannis Gloumis, 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 09/16/2024  
Declared closed by the arbitrator on 09/16/2024

Melissa Betancourt, Esq. from Law Offices of Melissa Betancourt, PC participated virtually for the Applicant

Joseph J. Licata III, Esq. from Rossillo & Licata LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,360.94**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount of \$4,360.94 was amended by stipulation between the parties during the arbitration hearing to \$3,628.94.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Applicant seeks reimbursement of charges for durable medical equipment ("DME") that was dispensed on July 24, 2023 and August 31, 2023, following a July 5, 2023 motor

vehicle accident. Respondent denied the claims in dispute based upon the defense of lack of medical necessity predicated upon the peer review reports by Harold Schechter, M.D. dated October 17, 2023 and November 5, 2023.

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence that has been submitted by the parties. There were no witnesses that appeared and testified during the arbitration hearing.

The EIP, then an 18-year-old male restrained driver, was injured in a motor vehicle accident on July 5, 2023. Following the accident, the EIP was transported by ambulance to the emergency department of Nassau University Medical Center, where he was evaluated, treated, and later discharged. Thereafter, the EIP came under the care of Atlantic Medical & Diagnostic, P.C. and underwent a conservative treatment program. The EIP presented with complaints of pain in the neck, mid back, lower back, and right shoulder. On July 13, 2023, Sonia Sikand, PA-C prescribed a bed board, a cervical collar, an EMS/TENS unit with belt, an infrared heating lamp, a foam egg crate mattress, a lumbosacral orthosis ("LSO"), a general lumbar cushion, an electric massager, and a right shoulder orthosis. Applicant dispensed the DME on July 24, 2023 and August 31, 2023.

Applicant billed Respondent \$4,360.94 for the DME that was dispensed on July 24, 2023 and August 31, 2023. Respondent received the bills for the claims in dispute on August 21, 2023 and September 19, 2023. Thus, Applicant has established its prima facie case. See *Amaze Med. Supply Inc. v. Allstate Ins. Co.*, 3 Misc 3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc 3d 767 (Civ Ct, NY County 2004); *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

Moreover, Respondent timely denied the charges in dispute on October 18, 2023 and November 7, 2023 based upon the defense of lack of medical necessity predicated upon the peer review reports by Harold Schechter, M.D. dated October 17, 2023 and November 5, 2023.

Dr. Schechter stated that an item such as a cervical collar has not been shown to be beneficial for this claimant's neck whiplash injuries; the claimant had been referred for

physical therapy, which would include a modality of therapeutic exercises whose purpose would be that of promoting neck range of motion and mobility; the use of the cervical collar which restricts neck movement would be incompatible with the goals of physical therapy; and immobilization is not recommended.

Regarding the LSO, Dr. Schechter stated that there was no mention of an acute spinal fracture, recent spinal surgery, a significant spinal instability, or an acute spinal cord injury that would warrant the immobilization provided by this orthotic, and the claimant had been referred for physical therapy with the purpose of promoting back range of mobility and motion. Dr. Schechter stated that the use of this orthotic, which restricts back movement, would be incompatible with the goals of physical therapy and it would not be reasonable to mobilize the spine part of the time with this LSO and then mobilize the spine during physical therapy. Moreover, Dr. Schechter stated that the current clinical practice is to avoid spinal immobilization in claimants with back sprain/strain whiplash injury so as to avoid complications of spasm, atrophy, weakness, or deconditioning.

Dr. Schechter also stated that there would be no medical necessity for the general lumbar cushion; lumbar supports were found to provide no benefit; there was no mention in the evaluation of any postural instability on prolonged sitting that could possibly warrant this equipment; and if the purpose of this item was just to provide comfort, then a regular pillow would be more sufficient.

Dr. Schechter further stated that there was no medical necessity for the egg crate mattress with bed board as the purpose of these items are that of preventing and treating bedsores in bedridden patients, but the claimant in this case was ambulatory and attending outpatient physical therapy. Dr. Schechter opined that these items would not be beneficial for this claimant's whiplash sprain/strain injuries. Dr. Schechter argued that there was no mention in the reports that the claimant's regular mattress was causing such discomfort to a degree that a special mattress was now required.

Dr. Schechter opined that there was no medical necessity for the electric heat lamp, EMS unit, and massager as the EIP was receiving physical therapy; it would be far more effective for the claimant to receive such electrical, heat, and massage treatments as part of an in-office physical therapy program by licensed and trained professionals than from unsupervised and unprofessional home use of these supplies; and manual massage by a physical therapist would be far more effective than home use of a mechanical massager.

Regarding the right shoulder orthosis, Dr. Schechter opined that the item was not medically necessary as there was no mention in the evaluation of any significant

shoulder instability, weakness, or deformity that could possibly warrant the item; the claimant was undergoing physical therapy with the purpose of promoting shoulder range of motion with therapeutic exercises, so the use of the orthotic which significantly restricts shoulder movement, would be incompatible with the goals of physical therapy; and shoulder supports are not recommended for subacute or chronic shoulder pain or mild to moderate acute pain and rotator cuff tendinopathies. Dr. Schechter argued that such an elaborate orthotic would be more appropriately ordered by an orthopedist, and such a clinical scenario was not noted in this case.

Applicant presented a rebuttal from Sonia Sikand, PA-C dated February 12, 2024. P.A. Sikand opined that the DME in dispute was medically necessary for this patient. P.A. Sikand discussed the history, the subjective complaints, the physical examination findings, the MRI findings, and the diagnoses. P.A. Sikand argued that there are several studies that address the efficacy of cervical collar compared with other treatments for neck pain due to whiplash injury. P.A. Sikand opined that the cervical collar was indicated in relation to the cervical sprain/strain to provide palliative care due to its stabilization effect. P.A. Sikand stated that the LSO was prescribed to facilitate healing of the spine and related soft tissues and to support the lumbar region, reduce pain, and facilitate flexion movements without causing pain. P.A. Sikand also stated that lumbar supports are used in primary care to reduce pain and improve mobility; the mechanism of support diminishes pain and spasm, allowing musculature to relax and decreasing pain while allowing greater painless ROM; and to facilitate healing following an injury to the spine or related soft tissues. P.A. Sikand stated that the use of medical supplies for home use is supplemental to in-office treatment, and is not contradictory, and creates an additional benefit and speeds up the recovery process. P.A. Sikand argued that orthotic devices are different from total immobilization as they allow sufficient amount of movement and when used properly, they provide support to better enable the patient to perform activities of daily living. P.A. Sikand stated that the EIP was prescribed a lumbar cushion as he was required to maintain an optimal sitting posture to reduce strain on the discs. P.A. Sikand argued that the bed board and egg crate mattress are used to relieve and resolve traumatically induced neck and back pain; the heating lamp's application helps speed up circulation and the far-infrared energy is much more readily absorbed, while gradually relaxing the muscle in spasm and relieves pain; the lamp provides a therapeutic benefit, such as increased safety, delivery of specific temperatures, and contour to the treatment site; and the deep penetrating infrared rays relieve pain and increase blood circulation in the muscles and help the body heal the injured area faster. P.A. Sikand states that the EMS unit was prescribed to relieve pain at home; and the fact that massage offered by a licensed massage therapist is superior, does not negate a portable massager's utility with regard to the pain management when a patient is at home. P.A. Sikand argued that a percussive massager has been proven to reduce stress, relieve muscle tension and stiffness, and alleviate pain. Regarding the right shoulder orthosis, P.A. Sikand stated that the orthosis was necessary based upon the positive findings to subside pain symptoms and to enhance recovery as the shoulder is a highly mobile joint and its stability can be compromised as the patient had sustained trauma to the shoulder and the soft tissue structures of the shoulder at risk of being injured.

"At a no-fault trial involving a defense of lack of medical necessity, an insurer has an initial burden to rebut the presumption of medical necessity which attaches to a claim form." *Parkway Hospital, Inc. v. Integon National Ins. Co.*, 64 Misc.3d 139(A) (App. Term 2d, 11th & 13th Dists. July 19, 2019). See also *Dayan v. Allstate Ins. Co.*, 49 Misc.3d 151[A] [App Term, 2d Dept, 2d, 2d, 11th & 13th Jud Dists 2015]).

Furthermore, the Court in *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767, 772 held the following, in relevant part:

*"...a denial premised on lack of medical necessity must be supported by evidence such as an independent medical examination, peer review, or examination under oath "setting forth a sufficiently detailed factual basis and medical rationale for the claim's rejection" (Amaze Med. Supply v Eagle Ins. Co., 2 Misc.3d 128[A], 2003 NY Slip Op 51701, \*1 [App Term, 2d Dept 2003]; see also Rockaway Blvd. Med. P.C. v Travelers Prop. Cas. Corp., 2003 NY Slip Op 50842[U] [App Term, 2d & 11th Dists 2003]; see also 11 NYCRR 65-3.8 [b] [4]; Choicenet Chiropractic P.C. v Travelers Prop. Cas. Corp., 2003 NY Slip Op 50697[U] [App Term, 2d & 11th Jud Dists 2003]; Rockaway Blvd. Med. P.C. v Allstate Ins. Co., 2003 NY Slip Op 50681[U] [App Term, 2d & 11th Jud Dists 2003])..."*

Where the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the applicant provider which must then present its own evidence of medical necessity. See *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131(A) (2006).

Following a complete review of the evidence presented, I find that Respondent has established its prima facie burden of lack of medical necessity for the DME that is in dispute. Respondent relied upon the peer review reports of Dr. Schechter in denying the claims in dispute. Dr. Schechter addressed each of the prescribed items in detail and provided a sufficient medical rationale for the lack of medical necessity of each of the DME items based upon the claimant's specific clinical scenario at the time that the items were prescribed. I have considered the rebuttal by P.A. Sikand. Following the evaluation on July 13, 2023, the EIP was diagnosed with bulging of the cervical, thoracic, and lumbar intervertebral discs and derangement of the right shoulder. P.A. Sikand prescribed continued physical therapy, chiropractic care, acupuncture, ultrasound guided TPIs, cervical and lumbar EMG/NCV testing, MRIs, Lidocaine 5% topical ointment, Diclofenac gel, the DME that is in dispute, a SAM unit, and a cold compression therapy unit. I am not persuaded that the prescribed DME in dispute was medically necessary on July 13, 2023 in conjunction with the prescribed conservative treatments that were

simultaneously prescribed and being performed in the office setting. I am persuaded by Dr. Schechter that a shoulder orthosis would be more appropriately ordered by an orthopedist, and that such a clinical scenario was not noted in this case. While P.A. Sikand cited the findings of the MRIs, I note that the MRIs were performed after the DME was prescribed. Consequently, Respondent's denial of the claims in dispute should be sustained.

Accordingly, Applicant's claims are hereby denied in their 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 Nassau

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

10/17/2024  
(Dated)

Ioannis Gloumis

**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:**  
508a25c483c9712e1be9480100b44b6c

### Electronically Signed

Your name: Ioannis Gloumis  
Signed on: 10/17/2024