

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Meds And Beyond Inc
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-24-1346-3962

Applicant's File No. n/a

Insurer's Claim File No. 0541187760001

NAIC No. 36447

ARBITRATION AWARD

I, Drew M. Gewuerz, Esq., CPC, 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: DG

1. Hearing(s) held on 10/21/2024
Declared closed by the arbitrator on 10/21/2024

Ian Besso, Esq., from The Sigalov Firm PLLC participated virtually for the Applicant

Colleen Foster, Esq., from LM General Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,959.40**, was AMENDED and permitted by the arbitrator at the oral hearing.

The Applicant's claims are amended to a total of \$3,183.34 to allegedly conform with the New York State Workers' Compensation Fee Schedules adopted by the Superintendent of Insurance (Department of Financial Services) and applicable law.

Stipulations WERE made by the parties regarding the issues to be determined.

See Section 3, *infra*.

3. Summary of Issues in Dispute

This arbitration to recover allegedly overdue PIP benefits involves a male Assignor, D.O.B. 1991, who was involved in a motor vehicle collision on 06/26/23, as a driver. Following the collision, the Applicant supplied the Assignor with prescriptions of Lidocaine 5% ointment and ibuprofen on 08/09/23 and 10/04/23. The Applicant now seeks reimbursement for the fees associated with said services.

At this matter's hearing, the parties stipulated to the following facts and/or legal issues:

1. The Applicant submitted the disputed overdue claims to the Respondent. As a result, it establishes its prima facie entitlement to an Award for said claims and the services are presumed to be medically necessary. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); and
2. The Respondent's denials of claim were timely issued and preserved defenses of lack of medical necessity based on two peer review reports by Jay Eneman, M.D., dated 11/27/23 and 11/10/23; and
3. The Applicant's claims, as amended, charge fees within the limits set by the New York State Workers' Compensation Fee Schedule adopted by the Superintendent of Insurance (Department of Financial Services) and applicable law.

As per the parties' stipulations, the issue to be decided is whether the disputed services were medically necessary, and the Applicant is entitled to reimbursement for them.

4. Findings, Conclusions, and Basis Therefor

This Award is rendered after diligent review and consideration of the parties' evidence submitted to and maintained by the American Arbitration Association's electronic case filing system, "MODRIA," as well as the parties' oral arguments and any testimony presented at this matter's hearing. Evidence that was submitted after this matter's "closing" and without this Arbitrator's authorization was not considered.

All citations in this Award to the Applicant's "Application Document" submission and Respondent's "Defense" submission shall be denoted as "(AXX)" and "(RXX)," respectively. Citation to the parties' supplemental submissions shall be denoted by the selected page out of the submissions' total pages, ("AXX/XX") and ("RXX/XX"), respectively.

The Respondent's denials of claim are vacated, and the Applicant's claims are awarded.

Although the Respondent's peer review reports establish the Respondent's burden of proving that the disputed services were not medically necessary, the Applicant's rebuttal affirmations and Assignor's medical records prove by a preponderance of the evidence that the disputed services were medically necessary. In sum, the Applicant re-establishes medical necessity after the Respondent rebuts its presumption.

Under N.Y. Ins. Law § 5102, No-Fault "first party benefits" are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle. Ultimately, the question of whether an eligible service provided is reimbursable under No-Fault will be determined by whether the procedures billed for are "medically necessary" for the treatment of a claimant's injuries arising out of an accident.

This arbitration's conflict centers on two medical experts who propose divergent standards of care and rationales for and against the necessity of the disputed services. In support of its defense that the disputed services were not medically necessary, the Respondent submits the peer review reports of Jay Eneman, M.D., dated 11/27/23 and 11/10/23. The Applicant opposes the peer review reports with rebuttal affirmations from the prescribing physician assistant, Aleksandr Kopach, P.A., dated 04/03/24 and 02/29/24.

The peer review reports articulate a standard of care that was breached by performing the disputed services. They further apply said standard of care to the Assignor's medical history and presentation, and thus, sets forth a sufficiently detailed factual basis and medical rationale establishing that the disputed services lacked medical necessity. *See Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128(A) (App. Term, 2d Dep't 2003). As a result, the burden shifts to the Applicant to re-establish the services' medical necessity. *See Park Slope Med. & Surg. Supply, Inc. v. Travelers Ins. Co.*, 37 Misc. 3d 19, 22 n.1(App. Term, 2d Dep't 2012). The rebuttals comprehensively address the peer reviewer's points and opinions. From this, the rebuttal is legally sufficient and persuasive. *Cf. Pan Chiropractic, P.C. v. Mercury Ins. Co.*, 24 Misc. 3d 136(A) (App. Term, 2d Dep't 2009). As a result, the Applicant re-establishes medical necessity.

Accordingly, the Respondent's defense fails, and the Applicant's claims are awarded as a preponderance of the credible evidence supports the disputed services' medical necessity.

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	Amount Amended	Status
	Meds And Beyond Inc	08/09/23 - 08/09/23	\$1,979.70	\$1,591.67	Awarded: \$1,591.67
	Meds And Beyond Inc	10/04/23 - 10/04/23	\$1,979.70	\$1,591.67	Awarded: \$1,591.67
Total			\$3,959.40		Awarded: \$3,183.34

B. The insurer shall also compute and pay the applicant interest set forth below. 05/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4.4(f)(3) (2002), "[i]n an award of interest, the arbitrator shall compute the amount due for each element of first-party benefits in dispute, commencing 30 days after proof of claim therefor was received by the insurer and ending with the day of payment of the award, subject to the provisions of subdivisions (c) and (d) of section 65-3.9 of this Part (stay of interest)."

Pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.9 (2002), "[i]nterest on overdue payments," the Respondent shall pay interest to the Applicant on the awarded overdue PIP benefit at a rate of two percent (2%) per month calculated on a pro rata basis using a thirty (30) day month. As applied to the claim(s) herein, interest accrues from the date of this matter's initiation through the date of payment of the awarded overdue PIP benefit where arbitration was not initiated within 30 days after receipt of a denial(s) of claim(s), or from the date that the claim(s) was(were) overdue where no denial was issued through the date of payment of the awarded overdue PIP benefits.

Initiation occurs, pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4.2(b) (2002), when an applicant mails the requisite statutory forms, *see* § 65-4.2(b)(1)(i), (ii), along with the applicable filing fee, *see id.* at (b)(1)(iii), to the designated organization with a copy to the insurer. Where the date of mailing is unascertainable from the evidentiary submissions, the date of actual receipt shall control.

The parties stipulated that interest shall run from the date that the American Arbitration Association received the Applicant's requisite statutory forms for this matter except as specifically delineated in § 4, *supra*.

C. Attorney's Fees

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

As this arbitration was filed after February 4, 2015, it is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-4 (2002) (Insurance Regulation 68-D). Accordingly, the Respondent shall pay the Applicant an attorney's fee according to §§ 65-4.6(c), 65-4.6(d). *See Kamara Supplies v. Geico Gen. Ins. Co.*, 2021 N.Y. Slip Op. (App. Div., 1st Dep't 2021).

- 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, Drew M. Gewuerz, Esq., CPC, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/21/2024
(Dated)

Drew M. Gewuerz, Esq., CPC

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:
7aad01bdd2466c1b58cd1bedf3417fd7

Electronically Signed

Your name: Drew M. Gewuerz, Esq., CPC
Signed on: 10/21/2024