

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Advanced Therapeutics of LI
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1319-4144
Applicant's File No.	M23-733910
Insurer's Claim File No.	0356981760101125
NAIC No.	35882

ARBITRATION AWARD

I,Carolynn Terrell-Nieves, 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: Claimant

1. Hearing(s) held on 01/08/2025
Declared closed by the arbitrator on 01/08/2025

James Errera,Esq. from Shapiro & Associates, P.C. participated virtually for the Applicant

Chealsea Waller,Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,154.04**, 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

The Assignor, a 69-year-old female, sustained injuries as the driver of a vehicle involved in an accident that took place on July 11, 2023. The issue presented is whether the Applicant is entitled to reimbursement for a cold compression unit and knee wrap dispensed on June 9, 2023. The Respondent issued a denial based upon a peer review performed by Robert Cristofaro, MD on September 11th, 2023.

The issue to be determined is: Whether the Applicant is entitled to reimbursement for DME provided to the Assignor that was denied by the Respondent predicated on a peer review?

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), Section 65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.

The decision below is based upon a review of all documents on file in the ADR Center maintained by the American Arbitration Association as of the date of this hearing, as well as any oral arguments of the parties and any testimony given during the hearing.

The EIP (SN) was a 57-year-old female, who was a restrained driver involved in a Motor Vehicle Accident on July 11, 2023. As a result of the accident, the patient sustained an injury to the left knee.

The (EIP) presented for an evaluation on August 01, 2023, with the following objective complaint and positive findings; aching left knee pain associated with soreness, pain rated at 7 out of 10. The pain was worsened with driving stairs and prolonged walking. Examination of the left knee revealed tenderness at the medial facet of the patella and lateral patellar facet. The patient was diagnosed with acute pain in the left knee and chondromalacia. The patient was recommended for physical therapy; prescribed Vascutherm 5 cold therapy device; and follow-up evaluation.

On August 11, 2023, The patient was prescribed the DME (Vascutherm 5 Cold Compression Therapy Device and Segmental Knee wrap).

The Respondent must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. See, Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co., 12 Misc.3d 128(A), 2006 NY Slip Op 50963 (U) (App Term 1 Dept. 2006). A peer review report's factual basis may be insufficient if it fails to provide specifics of the claim, is conclusory, or otherwise lacks a basis in the facts of the claim. Nir v. Allstate Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005). Every peer review requires individual scrutiny to determine whether the burden should be shifted back to the claimant to submit contrary expert proof. Novacare Medical P.C. v. Travelers Property Casualty Ins. Co., 31 Misc.3d 1205(A), 927 N.Y.S.2d 817 (Table), 2011 N.Y. Slip Op. 50500(U) at 3-4, 2011 WL 1226956 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

Peer

Peer reviewer Dr. Cristofaro opined that The Vascutherm 5 Cold Compression Therapy Purchase and Segmental Knee Wrap provided to the claimant was not medically necessary. He stated that in this case If cold therapy treatment was desired, a cooling pad or a bag of ice would have been sufficient for the topical application of cold. Cooling

devices, both passive and active pump-controlled devices, that provide cooling and compression have no additional clinical utility or Impact on health outcomes than the use of ice. Also, the clinical application of cold therapy is not clear.

Comparing the relevant evidence presented by both parties against each other, I find that the peer report sets forth sufficient factual basis and medical rationale to establish lack of medical necessity of the disputed equipment. The burden shifted to the Applicant to refute the findings of the peer review reports. The record contains a rebuttal from Dr. Kenneth Shapiro, M.D. and medical records that are relevant to refute the peer report.

Rebuttal

Applicant has provided a rebuttal by Dr. Kenneth SHapiro dated December 2nd, 2024 which provides numerous supports for the use of the vasopneumatic compression device with Kneer wrap. The rebuttal provides an analysis of what the unit does and how it does what it does. The rebuttal provides the benefits of utilizing the unit over simple cold packs/ice packs. Based on the documentation presented and the arguments made, I find, as a matter of fact, that the disputed items were medically necessary. Respondent has raised issues which Applicant has satisfactorily refuted. Reimbursement as requested is hereby due and owing.

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
	Advanced Therapeutics of LI	08/17/23 - 08/17/23	\$4,154.04	Awarded: \$4,154.04
Total			\$4,154.04	Awarded: \$4,154.04

B. The insurer shall also compute and pay the applicant interest set forth below. 10/04/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay interest from the filing date until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty (30) day month.

C. Attorney's Fees

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

The Respondent shall pay the Applicant attorney's fees in accordance with 11 NYCRR 65-4.6.

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

02/07/2025
 (Dated)

Carolynn Terrell-Nieves

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:
dbbd36a7ef2abc35330a6d77f418935d

Electronically Signed

Your name: Carolynn Terrell-Nieves
Signed on: 02/07/2025