

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Longevity Medical Supply, Inc.
(Applicant)

- and -

Liberty Mutual Insurance Company
(Respondent)

AAA Case No. 17-24-1343-9966

Applicant's File No. RB-22-421232

Insurer's Claim File No. 055381140

NAIC No. 36447

ARBITRATION AWARD

I, Meryem Toksoy, 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: Assignor (GR)

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

Alex Samaroo, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

Ms. Caroline Dennin from Liberty Mutual Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,309.27**, 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

Applicant is the assignee of a 54-year-old female who was injured as a passenger in a motor vehicle accident on 11-06-23.

It contends that **\$1309.27** is owed for **durable medical equipment** that was provided to the assignor on 01-08-24. This sum covers the **purchase of a cervical traction unit**, not requiring additional stand or frame (E0855); **and an LSO**, sagittal control, with rigid anterior and posterior panels, custom fitted (L0631).

Respondent, looking to obtain an award in its favor, argues there was no medical need for these items.

Based on the rationale outlined in the **peer review** by Ajendra Sohal, MD, it asserts the claim should be denied in full.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives.

There were no witnesses.

LEGAL FRAMEWORK

A presumption of medical necessity attaches to an applicant's properly submitted claim form; upon its receipt, the burden is on the insurer to demonstrate otherwise. Amaze Med. Supply v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 NY Slip Op 51701(U)(App Term, 2nd Dept, 2nd and 11th Jud Dists., Dec. 24, 2003).

To carry this defense, the insurer is required to "set forth with sufficient particularity the factual basis and medical rationale underlying that determination." Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 2006 NY Slip Op 51185(U)(App Term, 2nd Dept, 9th and 10th Jud Dists., June 8, 2006).

If the insurer can establish there was no need for the services, the burden will then shift to the applicant. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) (App Term, 2nd Dept, 2nd & 11th Jud Dists., Sept. 29, 2006).

To succeed, the applicant must offer evidence which serves to rebut the conclusion(s) stated in the peer review. High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A), 2010 N.Y. Slip Op.50447(U)(App. Term, 2nd Dept, 2nd, 11th & 13th Jud. Dists, Mar. 10, 2010). The same applies for IMEs. High Quality Medical, P.C. v. Mercury Ins. Co., 29 Misc.3d 132(A), 2010 N.Y. Slip Op.51900(U)(App. Term, 2nd Dept, 2nd, 11th & 13th Jud. Dists, Nov. 8, 2010).

In the absence of any persuasive proof to support the claim, the insurer's defense will stand, and the denials will be upheld. Quality Health Prods., Inc., v. Geico Ins. Co., 44 Misc 3d 139(A), 2014 NY Slip Op 51268(U)(App Term, 2nd Dept., 2nd, 11th & 13th Jud. Dists., Aug. 8, 2014).

DECISION

Having carefully considered the evidence, I find in favor of the Respondent.

My decision takes into account the peer review by Dr. Sohal and all of the medical records which have been made a part of the electronic file.

I have also considered the rebuttal by Erica David-Park, MD. Her reasoning as to why the items were ordered is unpersuasive. It does not lead me to conclude that the equipment was necessary for the assignor.

In light of the foregoing, the claim is hereby denied in full.

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, Meryem Toksoy, 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)

Meryem Toksoy

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:
6829b3f1b5aaa6244ff1454226ab2156

Electronically Signed

Your name: Meryem Toksoy
Signed on: 02/07/2025