

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sarvat Medical Supplies Corp
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1367-3093

Applicant's File No. N/A

Insurer's Claim File No. 0758003537 2SF

NAIC No. 29688

ARBITRATION AWARD

I, Ellen Weisman, 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: Patient

1. Hearing(s) held on 03/24/2025
Declared closed by the arbitrator on 03/24/2025

Roman Kulik, Esq. from Kulik Law Firm, .P.C participated virtually for the Applicant

Linda Smith, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,702.13**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Respondent issued a timely denial.

3. Summary of Issues in Dispute

This arbitration stems from treatment of a 38-year-old male, "JP," who sustained injuries as the driver of a motor vehicle involved in an accident on June 7, 2024. The issue is whether 12 items of durable medical equipment ("DME") dispensed on July 5, 2024, were medically necessary. The defense is predicated on a Peer Review Report of Alan P. Wolf, M.D.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted virtually on the Zoom platform. The defense of lack of medical necessity for the 12 items of DME at issue is predicated on a Peer Review Report of Dr. Wolf dated August 15, 2024. Applicant submitted a Rebuttal Report of Ruben Oganosov, M.D. dated September 23, 2024. All submissions will be considered.

Applicant's Medical Records:

The Comprehensive Medical Evaluation Report of John J. McGee, D.O. dated June 11, 2024, reflects that the patient presented complaining of radiating neck pain, along with tenderness in the right shoulder, left knee, bilateral ankles, right wrist, and right elbow. Physical examination revealed decreased range of motion of the cervical spine with evidence of cervical root impingement due to discogenic pathology, thoracic tenderness, decreased range of motion of the lumbar spine with tenderness and spasm indicative of myopathology, and positive straight leg raise testing reproducing pain in a radicular pattern. The right shoulder examination revealed tenderness, along with positive impingement and clinical orthopedic signs, and decreased range of motion. The left knee exam revealed positive McMurray's test and decreased range of motion. Strength and sensation were normal, and reflexes were diminished.

The diagnostic impressions included cervical, right ankle, left elbow, and right wrist sprains/strains, along with cervical radiculopathy and disc displacement, and internal derangement of the right shoulder and left knee. The treatment plan included trigger point injections, EMG/NCV testing, MRI studies, physical therapy, chiropractic care, medications, and items of DME, including a Game-Ready unit, SAM unit, cervical collar, cervical pillow, lumbar sacral support, lumbar cushion, bed board, egg crate mattress, orthopedic massage chair, EMS unit, TENS/EMS belt, infrared heat lamp, and massager "to the extent they are medically necessary."

Respondent's Peer Review Report:

Dr. Wolf concluded that all these items of DME were medically unnecessary. The physical therapy and chiropractic care program which was recommended was more than adequate to treat this patient's widespread musculoskeletal injuries. He stated that it is "incredulous" that so many medical supplies were prescribed at the initial evaluation on June 11, 2024, only four days after the accident. It is apparent that they were prescribed as a matter of routine rather than based on the patient's specific clinical need. Medical supplies should be prescribed in the appropriate clinical context, which was not done in this case. The fact that items of DME have potential utility does not equate to their medical necessity. There was no information as to how these supplies were necessary in the context of a thoughtful treatment plan.

With regard to the specific items prescribed, Dr. Wolf stated that there was no indication that the patient had difficulty sleeping and therefore the cervical pillow was

unnecessary. A cervical collar would restrict motion of the patient's neck which was contrary to the goal of physical therapy which was to improve his range of motion. The egg crate mattress and bed board are indicated for immobile bed-ridden patient's which was inapplicable to this patient.

Also, there was no index of any suspicion of spinal instability, such as high-grade spondylolisthesis, as evidenced by the fact that Dr. McGee recommended a physical therapy program. Therefore, there was no need for a lumbosacral orthosis. A lumbar support is used if there is evidence of fracture, dislocation, spinal instability, or post-operatively, none of which were present in this patient. The back cushion is a personal comfort item. The ankle and knee orthoses were not medically necessary as there was no evidence of instability in these regions. The mechanical massager is not as effective as a manual massage. The TENS unit and belt were prescribed for pain, but are used for neuromuscular re-education, and would only be indicated for home use where the patient has responded to an in-office trial. The heat lamp is an antiquated heating modality which can cause burns in the unsupervised home setting, and it had not been attempted during office-based therapy.

Applicant's Rebuttal Report:

Dr. Oganegov disagreed with the peer physician and concluded that these items were medically necessary. He stated that this patient's injuries were causing pain and interfering with his ability to rest and to perform activities of daily living. These items of DME were intended to assist with those functions.

He stated that the cervical pillow is a therapeutic mechanism intended to properly align the spine thereby reducing muscle tension, spasm, and pain. The cervical collar provides warmth, support, and relief from minor muscle spasm and strain. It also limits motion and is useful in symptom relief. The bed board and mattress are not only intended for bed-ridden patients, as they facilitate muscle relaxation thereby minimizing pain and enhancing the patient's comfort. The lumbosacral orthosis and lumbar cushion can reduce pain and improve mobility of the lumbar spine by providing even, gentle support for distracted lumbar vertebra, muscles, and ligaments thereby preventing pain and compression of the nerve roots. They are not incompatible with the goals of therapy as they do not totally immobilize the spine. Rather, they allow a sufficient amount of movement.

The knee orthosis is indicated for treatment of knee sprains, strains, swelling, and tears, among other conditions. It is commonly used to manage musculoskeletal knee injuries. Similarly, the ankle orthosis was necessary because the patient complained of ankle pain and had restricted range of motion with tenderness. The massager can supplement the office-based treatment by reducing pain, promoting sedation, mobilizing fluids, increasing muscular relaxation, and facilitating vasodilatation while the patient is not in the office. An EMS unit is used effectively in the out-patient setting for spinal pain relief. The infrared heat lamp is a convenient mechanism to afford heat therapy to the

external layer of the skin which is transferred by conduction to deeper layers. This patient's musculoskeletal injuries meet the criteria for the use of this device to facilitate early mobilization and to speed the recovery process.

Arguments of Counsel:

Respondent's counsel argued that, as stated by the peer physician, these items were medically unnecessary. Dr. Wolf reviewed each item and concluded that they were excessive. He noted that the patient had no sleep issues. Also, the goal of therapy was to increase mobility, and there was no evidence of instability. She argued that the thorough and credible Peer Review Report suffices to sustain the defense as to these 12 items of DME.

Applicant's counsel countered that there were positive clinical orthopedic tests and that the use of these items of DME was intended to complement the rehabilitation program, including physical therapy. He argued further that the thorough and credible Rebuttal Report cites to medical authorities, and it suffices to refute the Peer Review Report and justify these items.

Findings:

Applicant has established its *prima facie* entitlement to reimbursement for the 12 items of DME at issue based on submission of properly completed claim forms setting forth the amounts of the losses sustained and establishing that No-Fault payments are overdue. The denial is found to be sufficient as a matter of law. Therefore, Applicant's burden is also established by submission of sufficient medical records. *Ave. T MPC Corp. v. Auto One Ins. Co.*, 32 Misc.3d 128(A) 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 41292(U), 2011 WL2712964 (App. Term 2d, 11th & 13th Dists., 7/5/2011); *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 782, 774 N.Y.S.2d 564 (2d Dept., 2004), *Vista Surgical Supplies, Inc. v Metropolitan Property and Casualty Ins. Co.*, 2005-1328 K C., 2006 N.Y. Slip Op. 51047(U), June 2, 2006.

The burden then shifts to Respondent to establish the defense of lack of medical necessity for these 12 items of DME by submission of competent, expert proof in admissible form. *Citywide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc.3d 608, 777 N.Y.S. 2d 241, 2004 N.Y. Slip Op. 24034 (Civ. Ct., Kings Co., 2004), *aff'd.*, 8 Misc. 3d 1025 (2005). I find that Respondent's Peer Review Report is sufficient to meet its burden of proof of lack of medical necessity and to rebut Applicant's evidence.

Thereafter, the burden shifts back to Applicant to present competent medical proof as to the medical necessity for these 12 items of DME by a preponderance of the credible evidence. *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06), *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App.

Term 2d & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (See, Insurance Law Section 5102).

I find further that this burden has not been met by the medical records, the Rebuttal Report of Dr. Oganessov, or the evidence collectively. Rather, I am convinced by the thorough and credible Peer Review Report of Dr. Wolf, and the exam report of Dr. McGee, that these items were excessive and that they were prescribed prematurely, only four days after the accident, in the absence of evidence of serious injuries, fractures, dislocation, or instability of the spine or joints, and before the patient had attempted any conservative care, including active rehabilitation and medications.

Dr. McGee's report confirms that this patient sustained mild to moderate soft tissue sprains and strains for which an inordinate amount of conservative treatment modalities, including these items of DME, were prescribed without adequate examination, diagnoses, or explanation. The fact that Dr. McGee stated in his report that they are being prescribed "to the extent they are medically necessary" supports the conclusion reached by Dr. Wolf that they were done in a routine fashion rather than based upon this patient's specific clinical context.

This finding is supported by the fact that there was no indication that the patient has sleep difficulties which rendered the cervical pillow unnecessary. Also, he was not bed-ridden, and his mobility was encouraged as evidenced by the rehabilitation program which was ordered. Therefore, he was not at risk of pressure ulcers, and he did not require a bed board or egg crate mattress. I am also convinced that the lumbar cushion is an unnecessary personal comfort item. The lumbosacral support was unnecessary in the absence of evidence of spinal fracture or instability. Notably, Dr. McGee did not render any diagnoses concerning the patient's lumbar spine and therefore ordering lumbar items of DME was excessive as there were no serious lumbar injuries documented.

The orthoses prescribed were unnecessary as Dr. McGee's diagnoses related to the knee and ankle were generic in nature, and there was no indication of serious injuries, such as fractures, dislocation, or instability. Dr. McGee prescribed ankle and knee orthoses without having conducted a thorough examination of those regions. The left knee exam revealed positive McMurray's test, and joint tenderness, with slightly decreased range of motion, and the only finding in the ankle was tenderness. The diagnoses of internal derangement of the knee, and sprain/strain of the ankle, are generic in nature and fail to justify these items of DME at that time. The fact that the patient had a normal gait supports this aspect of my finding.

I am also unconvinced that this patient required a massager, TENS unit, or infrared heat lamp for home use at that early juncture before he had even begun a course of active office-based treatment, and there had been no trial of these modalities before they were dispensed. Also, these modalities were duplicative of one another and of the other modalities which were prescribed. The fact that Dr. McGee noted that the patient was only in "mild distress secondary to pain" at that acute phase supports my conclusion that his treatment recommendations were excessive, premature, and did not comport with

this patient's clinical condition. As a result, I find that based on the totality of the evidence, these recommendations lack credibility in their entirety.

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 Respondent and deny this claim in its entirety with prejudice.

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

03/28/2025
(Dated)

Ellen Weisman

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:

14861bca6ffc0a1b7ce1b7049fa7c913

Electronically Signed

Your name: Ellen Weisman
Signed on: 03/28/2025