

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pik Medical SLP Corp
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1351-0055

Applicant's File No. 178349

Insurer's Claim File No. 0728261371

NAIC No. 19232

ARBITRATION AWARD

I, Anne Malone, 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 04/25/2025
Declared closed by the arbitrator on 04/25/2025

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Peggy Gizzarelli, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,995.76**, 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 67 year old EIP reported involvement a motor vehicle accident on September 7, 2023; claimed related injury and received a bed board, cervical cushion and collar, LSO and mattress on September 19, 2023 and CTU, LSO, neuromuscular stimulator with belt, massager and heat lamp provided by the applicant on October 13, 2023.

The applicant submitted a claim for this durable medical equipment (DME), payment of which was denied by the respondent based upon a peer review by Richard Coven, M.D. dated November 8, 2023.

The issue to be determined at the hearing is whether the respondent established that the durable medical equipment at issue was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11th and 13th Jud. Dists. 2014.)

Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the durable medical equipment provided by the applicant was not medically necessary, respondent relies upon the peer review by Dr. Coven, who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to her. Dr. Coven considered possible arguments and justification for the need for the durable medical equipment at issue and determined that each item was not warranted under the circumstances presented.

Dr. Coven discussed in detail each item of durable medical equipment provided to the EIP on September 19, 2023 and October 13, 2023 and his reasons for determining that none were medically necessary for this particular EIP at the time they were provided.

The peer review contains descriptions of each item of DME its general uses and benefits and the absence of an indication of formal education related to each device or the length of time each should be used at home and concluded that in general each one was not necessary for the type of injuries sustained by this EIP.

Dr. Coven discussed specifically the standard of care for the sprain/strain and contusion/strain injury sustained by this particular EIP and determined that it included conservative care including physical therapy, chiropractic care, massage therapy, etc. for 4 to 6 weeks. This also included discussion of the reason and duration of use of each item of DME and proper use.

It was Dr. Coven's opinion that the standard of care in the instance would not involve the routine prescribing of DME for soft tissue injuries.

He supported, with relevant medical literature, his opinion that the DME at issue was not medically necessary for this EIP at the time it was provided.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the durable medical equipment at issue was not indicated for this particular EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, who bears the ultimate burden of persuasion to establish that the prescription medication at issue were medically necessary.

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including the report of the initial evaluation of the EIP on September 13, 2023, 6 days post-accident at which time the DME provided on September 19, 2023 was prescribed. At a follow-up evaluation on October 4, 2024 the LSO and cervical traction were prescribed. There is no indication in the reports of any particular reason that this DME was necessary for this EIP.

In this case, the submitted medical records do not meaningfully address the arguments that are raised in the peer review and do not establish that the durable medical equipment at issue was medically necessary.

Furthermore, the applicant did not provide a rebuttal to the peer review and therefore it did not respond to the respondent's argument that the durable medical equipment provided to the EIP was a deviation from a reasonable medical standard of care at the time it was provided. The medical records alone are not sufficient to rebut the conclusions of Dr. Coven.

Based on the foregoing, I find that the respondent established that the durable medical equipment at issue was not medically necessary.

Accordingly, the claim is dismissed with prejudice.

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 CT

SS :

County of Fairfield

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

05/16/2025
(Dated)

Anne Malone

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:
a3ad4fa84b948bd1c1c3b15b90327bd1

Electronically Signed

Your name: Anne Malone
Signed on: 05/16/2025