

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mar-And Medical Equipment, Inc (Applicant)	AAA Case No.	17-24-1353-9459
- and -	Applicant's File No.	3133410
	Insurer's Claim File No.	0744686692 3W4
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Glen Wiener, 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

1. Hearing(s) held on 06/09/2025
Declared closed by the arbitrator on 06/09/2025

Andrew J. Costella, Jr., Esq. from Law Offices of Andrew J. Costella Jr., Esq.
participated virtually for the Applicant

Billsy Reyes-Bakke, Esq. from Law Offices of John Trop participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$956.45**, 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

Assignor S.M. a 27-year-old female driver was involved in an automobile accident on February 6, 2024. She did not seek immediate emergency medical attention.

On February 14, 2024, complaining of neck and back pains, she consulted Joel S. Gottlieb, D.C. On February 28, 2024, Dr. Gottlieb prescribed a custom lumbosacral support and TENS unit for Assignor.

Applicant Mar-And Medical Equipment Inc. provided the LSO to Assignor a month later, on March 20, 2024, and the Tens unit to Assignor on April 3, 2024.

Respondent denied Applicant's requests for reimbursement based on a peer review performed by Bonnie Corey, D.C. dated May 7, 2024.

The question presented is whether the items were medically necessary.

4. Findings, Conclusions, and Basis Therefor

The decision below is based on the documents on file in the Electronic Case Folder maintained by the American Arbitration Association as of the date of this hearing and on oral arguments of the parties. No witness testimony was produced at the hearing.

Applicant Mar-And Medical Equipment Inc., as assignee of S.M. seeks \$956.45 reimbursement, with interest and counsel fees, under the No-Fault Regulations, for durable medical equipment provided to Assignor.

Respondent Allstate Fire & Casualty Insurance Company insured the motor vehicle involved in the automobile accident. Under New York's Comprehensive Motor Vehicle Insurance Reparation Act (the "No-Fault Law"), New York Ins. Law §§ 5101 et seq., Respondent was obligated to reimburse the injured party (or her assignee) for all "reasonable and necessary" medical expenses arising from the use or operation of the insured vehicle.

Assignor S.M. a 27-year-old female driver was involved in an automobile accident on February 6, 2024. She did not seek immediate emergency medical attention.

The next day complaining of neck and back pains, Assignor presented to an urgent care center. The examination of her lumbar spine revealed no spasms, full ranges of motion, and negative straight leg raise test.

On February 14, 2024, complaining of neck and back pains, Assignor consulted Joel S. Gottlieb, D.C. The examination of Assignor's cervical and lumbar spines revealed reduced ranges of motion. Strength, sensation, and reflexes were not pathological. Maximum foraminal compression, Kemps, Lasegue SLR, Linders and one other illegible tests were positive.

That same day, Assignor was also examined by a pain management specialist, Nitin Narkhede. The examination of Assignor's lumbar spine similarly revealed reduced ranges of motion but straight leg raising was negative bilaterally.

On February 28, 2024, Dr. Gottlieb prescribed an L0631 custom lumbosacral support [LSO] and TENS unit for Assignor. The letter of medical necessity dated February 28, 2024, indicates the items were prescribed "to reduce pain by restricting mobility of the trunk" and to "facilitate healing".

Applicant provided the LSO to Assignor a month later, on March 20, 2024, and the TENS unit to Assignor on April 3, 2024. Respondent denied Applicant's requests for reimbursement based on a peer review performed by Bonnie Corey, D.C. dated May 7, 2024.

The question presented is whether the items were medically necessary.

Applicant established a prima facie case by submitting evidence that payment of no-fault benefits is overdue, and proof of its claims, using the statutory billing forms, were mailed to, and received by Respondent. *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 25 N.Y.3d 498, 501 (2015). The proof Applicant mailed the claim forms to Respondent is embodied in the latter's denials, which reference receipt of the proofs of claim. See *Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co.*, 9 Misc.3d 97, 804 N.Y.S. 2d 532 (App. Term 9th and 10th Jud. Dist. 2005).

Once Applicant established its prima facie case the burden shifted to Respondent to prove the LSO and TENS unit in question were not medically necessary. See *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dept. 2005); *A.B. Medical Services, PLLC v. Geico Ins. Co.*, 2 Misc.3d 26, 773 N.Y.S.2d 773 (App. Term 2d & 11th Jud. Dist. 2003). Lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Company*, 5 Misc.3d 975, 787 N.Y.S. 645 (Civ. Ct. NY Co. 2004)

"A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards. For example, the medical rationale may be insufficient if not supported by evidence of the generally accepted medical professional practice." *Jacob Nir, M.D. v. Allstate Ins. Co.*, 7 Misc.3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005).

"Generally accepted practice is that range of practice that the professional will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." *Citywide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co.*, 3 Misc.3d at 616. This is the standard that will be applied herein.

In opining the LSO and TENS unit were not medically necessary the peer reviewer Dr. Corey stated:

A restrictive device like the LSO would be for the indication of ligamentous instability or severe muscle weakness, post-operative, or compression fractures that warrant supportive medical devices to facilitate healing for the lumbar spine.

The criteria for necessity for this type of device have clearly not been met. When there is no ligament instability or fracture, the goal of soft tissue rehabilitation is to encourage motion, not limit it.

This device [a TENS unit] is done to relieve chronic pain that is not easily managed or controlled, postsurgical pain, or pain associated with trauma that is unresponsive to other standard therapies.

There was no indication that this claimant was not responding to the current active chiropractic treatment, which is the standard of care.

Upon review of the available medical records, there was no indication of any progressive nerve related chronic intractable pain to warrant the medical necessity of a stimulator unit.

The standard of care for post-traumatic soft tissue injuries sustained in a motor vehicle accident is conservative treatment as what was prescribed. Prescribing medical equipment for home use while the claimant is receiving in-office treatment consisting of chiropractic treatment is excessive.

The above quoted statements set forth a sufficient factual basis and medical rationale for the opinion the LSO and TENS unit provided were not medically necessary and therefore established *prima facie* the items billed for were not medically necessary. See *Delta Diagnostic Radiology, PC v. Progressive Casualty Ins. Co.*, 21 Misc.3d 142A (App. Term 2d and 11th Jud. Dist. 2008); *Crossbridge Diagnostic Radiology, PC v. Progressive Casualty Ins. Co.*, 20 Misc.3d 143A (App. Term 2d and 11th Jud. Dist. 2008).

In response Applicant submitted a peer rebuttal from Dr. Gotlieb. After careful consideration of both experts' reports and opinions it is determined that the peer review is more compelling.

First, Dr. Gottlieb attempts to justify the prescriptions issued on February 28, 2024, by referencing subsequent examinations and test results from March 18, 2024.

[The peer reviewer] neglected to review my office's Chiropractic Re-Exam report dated 3/18/2024 which predates our patient's LSO and TENS unit which DMEs were dispensed

undisputed MRI testing [On March 18, 2024] - revealing multilevel cervical spine disc herniations and multilevel lumbar spine disc bulges - documented [Assignor's] causally-related and traumatically-induced neck and low back injuries and related spinal instability.

A determination of medical necessity must be based on evidence in existence prior to the rendering of the service. *Unitrin Adv. Ins. Co. v. Lake Chiropractic PLLC*, 64 Misc.3d 1201(A), 2019 NY Slip Op. 50953(U) (Civ. Ct. Kings Co., S. Kraus, J. Jun. 13, 2019)

Secondly, Dr. Gotlieb tries to validate the prescriptions by citing to the New York State Workers Compensation Medical Treatment Guidelines. However, a review of the 2024 Mid and Low Back Injury Medical Treatment Guidelines [*Guidelines*] do not support prescribing these items on February 28, 2024, just two weeks after the initial chiropractic evaluation on February 14, 2024.

The *Guidelines* states:

D.5.b. Transcutaneous Electrical Neurostimulation (TENS)

Recommended- for select use in treatment of chronic low back pain or chronic radicular pain syndrome as a second line adjunct to other first line treatments.

Indications: include muscle spasm, atrophy and concomitant pain in the office setting. . .Consistent, measurable, functional improvement must be documented, and a determination made of the likelihood of chronicity prior to the provision of a home unit.

D.2.c. Lumbar Supports

Indications: Lumbar supports may be useful for specific treatment of spondylolisthesis, documented instability, or post-operative treatment.

Assignor did not have chronic pain when the TENS unit was prescribed mere weeks after the accident. Moreover, Assignor was not diagnosed with spondylolisthesis, documented instability, or post-operative treatment necessitating the LSO.

Dr. Gotlieb incorrectly asserts Assignor "absolutely presented with 'ligament instability' necessitating his (sic) LSO as corroborated by a bevy of orthopedic deficits documented . . . include[ing] positive Kemp's Test bilaterally, positive Lasegues' Testing bilaterally, and even positive Linders' test."

Following the initial chiropractic examination, Dr. Gottlieb commenced chiropractic manipulation on Assignor. However, according to the authoritative

Guidelines cited by Dr. Gotlieb, manipulation is contraindicated in there is actual instability.

D.8.f. Manipulation

Contraindications to manipulation may include joint instability, fractures, serve osteoporosis, infection, metastatic cancer, active inflammatory arthritis, and signs of progressive neurological deficits or myelopathy.

Spinal or ligamentous instability by its plain meaning refers to excessive or abnormal movement between spinal bones. The February 14, 2024, report does not mention any suspicion of spinal instability. Moreover, positive Kemps, Lasegues, and Linders tests are not conclusive tests for spinal instability. Moreover, two other treating doctors reported that straight leg raising was negative.

If spinal instability, requiring bracing, was truly suspected, chiropractic manipulation should have been postponed pending medical imaging and if warranted the LSO should have been provided less than one month after being prescribed.

It is ultimately Applicant who must prove, by a preponderance of the evidence, LSO and TENS unit were medically necessary. *Dayan v. Allstate Ins. Co*, 39 Misc.3d 151(A) (App. Term 2d, 11th & 13th Dists. 2015); *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co.*, 37 Misc.3d 19, 952 N.Y.S.2d 372. (App. Term 2d, 11th & 13th Dists. 2012) This was not done herein.

Accordingly, Applicant's request for reimbursement is denied and Respondent's denials are sustained. This award is in full disposition of all No-Fault benefit claims submitted to 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 NY
SS :
County of New York

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

06/16/2025
(Dated)

Glen Wiener

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:
f6549be414fc366a7147f0affab8c37f

Electronically Signed

Your name: Glen Wiener
Signed on: 06/16/2025