

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

SMG Mediquip, LLC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1364-6301

Applicant's File No. FDNY24-81180

Insurer's Claim File No. 0741414155
KFR

NAIC No. 29688

ARBITRATION AWARD

I, Pamela Hirschhorn, 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: Injured Person

1. Hearing(s) held on 06/27/2025
Declared closed by the arbitrator on 06/27/2025

Connor McHugh, Esq. from Fass & D'Agostino, P.C. participated virtually for the Applicant

Caroline Glover, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$797.16**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

See, the within award.

3. Summary of Issues in Dispute

The injured person was a female (DOB 7/26/60) who was involved in the subject motor vehicle accident of January 8, 2024. The claim is for DME provided on January 31, 2024. The parties stipulated that the claim was timely denied based upon the peer review of Kevin S. Portnoy, D.C., dated

June 20, 2024. The applicant submitted a rebuttal by Nestor Nicolaides, D.C. There were no fee schedule issues raised. At issue are the following items:

Lumbar Orthosis, Sagittal Control, and TENS unit with electrodes. The issue is whether the peer review established prima facie that the DME was not medically necessary.

4. Findings, Conclusions, and Basis Therefor

The injured person was a female (DOB 7/26/60) who was involved in the subject motor vehicle accident of January 8, 2024. The claim is for DME provided on January 31, 2024. The parties stipulated that the claim was timely denied based upon the peer review of Kevin S. Portnoy, D.C., dated June 20, 2024. The applicant submitted a rebuttal by Nestor Nicolaides, D.C. There were no fee schedule issues raised. At issue are the following items:

Lumbar Orthosis, Sagittal Control, and TENS unit with electrodes.

The peer review doctor reviewed the relevant medical records and reports and found that the DME was not medically necessary based upon the patient's findings elicited, or was contraindicated, prescribed prematurely or lacked efficacy. Since the peer review doctor set forth a medical basis for the rejection of the claim, this arbitrator finds that the peer review established prima facie that the DME was not medically necessary. The burden then shifted to the applicant to demonstrate by a preponderance of the credible evidence that the DME was medically necessary.

The applicant's rebuttal referenced the patient's complaints and findings at the time of initial chiropractic examination on January 10, 2024, which was two (2) days post-accident. At that time the patient had headaches; neck pain radiating to the arm associated with numbness; lower back pain radiating to the buttocks and legs associated with numbness. The patient was diagnosed with radiculopathy lumbosacral region; segmental and somatic dysfunction of the cervical region; segmental and somatic

dysfunction of the thoracic region; and segmental and somatic dysfunction of the lumbar region. The patient was recommended for chiropractic treatment as well as a follow-up evaluation.

MRI of the Cervical Spine performed on January 26, 2024, revealed disc bulging at the C2- C3 level with thecal sac impingement; right paracentral herniation at the C3-C4 level with posterior and superior extrusion, impinging upon the originating right CS root, right foraminal herniation component, displacing the exiting right C4 root, moderate right foraminal stenosis; right paracentral herniation at C4-CS level with superior and central inferior extrusion, impinging upon the cord and originating right C6 root, right foraminal herniation component, impinging upon the exiting right CS root, mild right foraminal stenosis; broad central herniation at CS-C6 level with a left foraminal herniation component, impinging upon the exiting left C6 root, inferiorly extruded paracentral herniation component, impinging upon the originating left C7 root; disc bulging at C6-C7 level with a superiorly extruded left paracentral herniation component, impinging upon the cord and originating left CS root; disc bulging at the C7-T1 level with a right lateral herniation, impinging upon the exited right CS root. MRI of the Lumbar Spine performed on January 31, 2024, revealed disc bulging at the L1- L2, L2-L3, and L3-L4 levels without stenosis; disc bulging at the L4-L5 level with bi-foraminal impingement upon the exiting nerve roots and moderate bilateral foraminal stenosis; disc bulging at the LS-S1 level with bi-foraminal impingement upon the exiting LS roots and moderate bilateral foraminal stenosis.

This arbitrator has reviewed the prescription for the DME which was generated on January 31, 2024, based upon the initial chiropractic examination findings of January 10, 2024.

With regards to Lumbosacral Orthosis:

In response to the peer review, the applicant's rebuttal referenced that the patient's clinical and diagnostic findings warranted the LSO prescribed.

The applicant's rebuttal referenced that this device was ordered to facilitate healing following an injury by limiting improper mobility and muscular

activity in the lumbar region. The lumbar support was meant to provide even, gentle support for distracted lumbar vertebrae, paraspinal muscles and ligaments, to alleviate pain and prevent compression on intervertebral nerve roots, muscle spasms, and stiffness. The applicant's rebuttal referenced that the mechanism of support diminishes pain, and spasm and allows musculature to relax in turn decreasing pain and allowing a greater painless range of motion.

The applicant's rebuttal referenced that providing support to the back would reduce muscle spasm and would help facilitate healing.

The applicant's rebuttal referenced that the LSO would not immobilize the spine and would not be counterproductive to the goals of physical therapy or chiropractic treatment. This arbitrator has considered the evidence and is persuaded that the LSO would aid in the treatment and management of the injured person was medically necessary.

With regards to the TENS Unit with electrodes:

Although the applicant's rebuttal suggested that the TENS unit with electrodes was medically necessary "for long-term use at home, so the patient can benefit from its use for intractable pain and when experiencing flare-ups..." this arbitrator is not persuaded that this item was medically necessary based upon the findings elicited upon initial examination. The claim for the TENS unit and electrodes is denied.

The applicant is awarded reimbursement for the LSO in the amount of \$708.65. Attorney's fees shall be calculated pursuant to 11 NYCRR 65-4.6 (d). Interest shall be calculated from the AR1 filing date. See, 11 NYCRR 65-3.9 (c).

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
	SMG Mediquip, LLC	01/31/24 - 01/31/24	\$797.16	Awarded: \$708.65
Total			\$797.16	Awarded: \$708.65

B. The insurer shall also compute and pay the applicant interest set forth below. 09/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

See, the within award.

C. Attorney's Fees

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

See, the within award.

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

06/29/2025
(Dated)

Pamela Hirschhorn

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:
583fbc33cb917a7da3ed966f8d788d52

Electronically Signed

Your name: Pamela Hirschhorn
Signed on: 06/29/2025