

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ortho Sports Supply Inc.
(Applicant)

- and -

Progressive Casualty Insurance Company
(Respondent)

AAA Case No. 17-24-1337-0633

Applicant's File No. LIP-33924

Insurer's Claim File No. 23-2276397

NAIC No. 24279

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 06/20/2025
Declared closed by the arbitrator on 06/20/2025

Usman Nawaz, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for
the Applicant

Mary Casapello from Progressive Casualty Insurance Company participated virtually for
the Respondent

2. The amount claimed in the Arbitration Request, **\$5,400.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$5,100.00 to conform to the appropriate fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The 25 year old EIP reported involvement in a motor vehicle accident on September 4, 2023; claimed related injury and received PEMF heat system provided by the applicant on November 7, 2023.

The applicant submitted a claim for this durable medical equipment, (DME), payment of which was timely denied by the respondent based upon a peer review by Kevin Portnoy, D.C. dated January 11, 2023. In response, the applicant submitted a letter of medical necessity dated December 12, 2023 by Jongdog Park, D.C., one of the EIP's treating providers, who recommended this DME.

The issue to be determined at the hearing is whether the respondent established that the medical services at issue were 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.)

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. Portnoy, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to her. Dr. Portnoy considered possible arguments and justification for the need for the DME at issue and determined that it was not warranted under the circumstances presented.

Dr. Portnoy submitted a comprehensive report in which he discussed the medical services provided and his reasons for determining that it was not medically necessary for this EIP at the time it was provided.

Dr. Portnoy discussed in detail the requirements for use of this particular DME, which includes contemporaneous chiropractic documentation that relates to the

specific need for this device. This documentation would include evaluation for the DME, instruction for safe and effective use and follow up regarding response to treatment with this device.

He noted that Dr. Park did not provide any chiropractic necessity for this particular DME and did not indicate how it would aid in reducing the number of office visits or enhance the clinical prognosis of the EIP.

Dr. Portnoy discussed the standard of care for this DME and determined that this device did not meet these criteria.

He supported, with relevant medical literature, his opinion that the durable medical equipment provided to the EIP was not medically necessary.

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

The applicant did not submit a formal rebuttal. However, the applicant relies upon a letter of medical necessity by Dr. Park and the submissions to refute the conclusions reached by Dr. Portnoy.

The letter discusses the uses and benefits of the PEMP device for treatment of chronic pain. Dr. Park states that the EIP suffers every day from chronic lumbar pain sustained from an injury. He requested authorization of this device for 30 days of treatment.

The medical records submitted by the applicant include the initial chiropractic evaluation of the EIP on September 9, 2023, 5 days post-accident. The report indicates restricted range of motion in the cervical and lumbar spine with moderate muscle spasm.

Other submissions include a report by Active Life Chiropractic, PC of an ultrasound procedure, acupuncture initial evaluation and progress notes, physical therapy evaluation and progress notes, reports by Atlantic Medical & Diagnostic, PC and Pain Physicians NY, PLLC. Also included is an operative report for right shoulder arthroscopy with post-operative evaluations.

The applicant did not provide rebuttal to the peer review. Therefore, it did not respond to the respondent's argument that the medical services provided to the EIP were a deviation from a reasonable chiropractic. The letter of medical necessity and medical records alone are not sufficient to rebut the conclusions of Dr. Portnoy.

Based on the foregoing, I find that the respondent has established that the PEMF device provided to the EIP 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.

07/05/2025
(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:
a2d3eb93674d03db804b00b0a30d2fb4

Electronically Signed

Your name: Anne Malone
Signed on: 07/05/2025