American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

DME Hub Inc (Applicant)	AAA Case No.	17-25-1405-2895
	Applicant's File No.	198568
- and -	Insurer's Claim File No.	HLV25005843-01
	NAIC No.	24309
Hereford Insurance Company (Respondent)		

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 06/26/2026
   Declared closed by the arbitrator on 06/26/2026

   Edilaine D'Arce, Esq. from Law Offices of Eitan Dagan P.C. participated virtually for the Applicant

   Rosemary Repetto, Esq. from Law Offices of Ruth Nazarian participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$808.25**, 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 81 year old EIP reported involvement a motor vehicle accident on January 30, 2025; claimed related injury and received a transcutaneous electrical joint stimulator device (TEJSD) provided by the applicant on May 3, 2025.

   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 Cyrus Kao, M.D. dated June 6, 2025. In response, the applicant submitted a letter of medical necessity by Julia Ellis, NP for the DME provided dated April 17, 2025.

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 DME provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Kao, who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to him. Dr. Kao 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. Kao specifically discussed the standard of care for the TEJSD prescribed for this EIP and determined that he did not meet these criteria. He described the uses and expected benefits of this device, which he determined was used as a second-line therapy following the failure of other conventional treatments. He

noted that this particular device is generally indicated for treatment of arthritis which could not be attributed to the subject accident.

Dr. Kao supported, with relevant medical literature, his opinion that the DME at issue was not medically necessary for this particular EIP at the time it was provided for injuries sustained in the subject accident.

In opposition to the peer review, the applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including a letter of medical necessity by Julia Ellis, NP for the TEJSD provided. The letter stated generally that this device was prescribed to help treat and manage acute or chronic musculoskeletal pain.

The medical records submitted include a progress note from Juila Ellis, NP on April 17, 2025 which noted complaints of pain and tenderness with restricted range of motion. The EIP had been receiving conservative treatment including chiropractic, physical therapy and acupuncture and pain management including trigger point injections.

After a review of all of the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented in the peer review by Dr. Kao and the letter of medical necessity by Julia Ellis, NP submitted on behalf of the applicant.

In this instance, the letter of medical necessity did not meaningfully refer to or rebut the findings of Dr. Kao regarding this specific DME and the medical reports submitted do not contradict his assertions.

Therefore, I find that the submission of Dr. Kao to be more persuasive in this instance.

Based on the foregoing, I find that the respondent established that the DME 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.

07/16/2026
(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:
b1cb66c42eeec4a35dbe3671c7b7b056

Electronically Signed

Your name: Anne Malone
Signed on: 07/16/2026