

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

(Applicant)	AAA Case No.	17-22-1236-6147
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	0461977790002
LM General Insurance Company (Respondent)	NAIC No.	36447

### ARBITRATION AWARD

I, Robyn McAllister, 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 10/11/2022  
Declared closed by the arbitrator on 10/11/2022

Jeffrey Datikashvili, Esq. from The Sigalov Firm PLLC participated for the Applicant

Joseph Champion, Esq. from LM General Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,346.76**, 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

Whether Respondent properly denied Applicant's claim for providing a cervical traction unit and LSO to Assignor (JYV), a 23 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on July 6, 2021, based on a peer review by Ji Hoon Kim, D.C.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$1346.76 for providing a cervical traction unit and LSO on August 25, 2021 to Assignor (JYV), a 23 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on July 6, 2021. Respondent timely denied Applicant's claim predicated on a peer review dated October 12, 2021 by Ji Hoon Kim, D.C.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denial acknowledged timely receipt of Applicant's bill. In *Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the medical supplies were not medically necessary. I disagree. I was not persuaded by the peer review report and addendum dated February 28, 2022 by Dr. Kim.

Dr. Kim noted that Assignor "was examined on 07/07/21 and was started on conservative treatment. The patient had several diagnostic tests performed and was provided with various medical supplies including the LSO and cervical traction."

Dr. Kim stated that "Dr. Lee did not provide detailed information as to why the above items were medically necessary for this particular claimant." He further stated that there was no "documentation" that Assignor was instructed in proper use of the equipment.

Dr. Kim asserted that "according to generally accepted standards of current clinical practice, the goal of rehabilitative therapy is to increase mobility and to limit mobility only in cases of more serious injury such as for example cases of lumbar instability, fracture and for post-surgical cases. Otherwise, it is counterproductive to limit mobility with such a device - this would only facilitate increased stiffness and would limit the range of motion improvement that rehabilitative therapy aims to accomplish. Wearing such a device can actually cause the musculature of the back to relax and rely on such a brace, which in many cases is not a good thing long term as the muscles can lose some of their supportive strength which is important for functionality as well as keeping the torso upright with good posture. While the patient may feel like they are experiencing a "relief", actually it is counterproductive as it limits mobility and has a risk of the patient becoming reliant on it. This is yet an additional reason for why such a brace is not indicated in a soft tissue injury of this type."

Dr. Kim opined that "the claimant did not sustain any type of injury that would indicate the need for LSO support." He further argued that the efficacy of lumbar supports has not been established in medical literature.

In regard to the cervical traction unit, Dr. Kim asserted that "the following parameters need to be specified in a prescription of traction: 'Positioning, intermittent or continuous administration, amount of pull, duration.'" As noted above, details such as these were not provided when the cervical traction device was recommended." He added that "if the claimant uses cervical traction him/herself alone incorrectly or did not understand the clinician's instruction properly, it could cause harm and/or exacerbate the symptoms." He added that "there is no evidence that the patient had any mechanical traction sessions, as a part of in-office treatment to assess how effective the mechanical cervical traction unit would be."

Finally, he concluded that the supplies would not "make meaningful contribution to the treatment" of Assignor's injuries and therefore "were not prescribed in accordance with generally accepted standards of clinical practice."

In support of its claim, Applicant submitted the documents contained in the ADR Center including initial report, prescription and rebuttal to the peer review dated December 11, 2021 by Dong Hwan Lee, D.C., MRI reports, measurement sheet and delivery receipt. I was persuaded by the medical evidence that the cervical traction unit and LSO were warranted.

According to Dr. Lee, on July 9, 2021, Assignor "presented to me for a chiropractic evaluation of her injuries" with complaints of neck, mid-back and lower back pain. "Examination of the cervical spine revealed tenderness, decreased range of motion with pain, and positive Cervical Compression test, Cervical Distraction test, Shoulder Depression test, Soto Hall test, and O'Donoghue test. Examination of the thoracic spine revealed tenderness, spasm, and decreased range of motion with pain. Examination of the lumbar spine revealed tenderness, spasm, decreased range of motion with pain, and positive Straight Leg Raising test, Kemp's test, and Yeoman's test. Based on complaints and findings upon evaluation, the diagnostic impression was cervical, thoracic, and lumbar segmental dysfunction. Therefore, the patient was recommended to start on a course of chiropractic treatment."

Dr. Lee noted that MRI of the cervical spine revealed "straightening of cervical lordosis" and "C3-C6 level broad-based disc herniation" and MRI of the lumbar spine revealed "straightening of lumbar lordosis" and "L4-L5 level broad-based disc herniation" with impingement. Dr. Lee stated that "based on the patient's complaints and findings upon evaluation, and the review of the results of the MRI studies; on 8/13/2021, I prescribed CTU and LSO to use at home in conjunction with office based treatment."

Dr. Lee noted that contrary to Dr. Kim's contention, the delivery receipt clearly indicated that Assignor was properly instructed in the use of the equipment. Dr. Lee further stated that contrary to Dr. Kim's argument, "bracing is an effective option in the treatment of lower back pain. This device is ordered to facilitate healing following an

injury by limiting improper mobility and muscular activity in the lumbar region. The mechanism of support diminishes pain, spasm and allows musculature to relax in turn decreasing pain and allowing a greater painless range of motion."

He pointed to the positive clinical findings on examination relative to the lumbar spine and stated that "the use of braces is done in conjunction with a lumbar strengthening exercise program. Ideally, the lumbar strengthening exercise program will increase muscle strength, which makes the brace unnecessary. Unfortunately, such a program takes many months to have this effect. The brace can help support the spine until muscle strength can do the job."

Dr. Lee argued that contrary to Dr. Kim's assertion, there is proven efficacy of the use of lumbar supports for the treatment of lower back and cited to various article supporting such use.

In regard to the cervical traction unit, Dr. Lee argued once again that Assignor was properly instructed in use of the equipment. He further asserted that the presence of both muscle spasms and disc herniation in Assignor's cervical spine warranted prescription of cervical traction. He cited to various articles demonstrating the proven efficacy of cervical traction in treating such conditions and argued that no in-office trial was required prior to prescribing a home unit.

Even if Dr. Kim's peer review was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Kim's assertions. *See A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11<sup>th</sup> Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11<sup>th</sup> Dist. 2006).

Dr. Lee's rebuttal meaningfully referred to and rebutted the conclusions set forth in the peer review report. *See High Quality Medical, P.C. v. Mercury Ins. Co.*, 26 Misc.3d 145(A) (App. Term 2d, 11<sup>th</sup> & 13<sup>th</sup> Dists. 2010). He explained why Assignor's condition warranted use of the equipment and provided medical literature to support his opinion that the devices prescribed have prove efficacy in the treatment of neck and back pain.

After a careful review of the evidence, including Dr. Kim's addendum to the peer review, which reiterated his earlier assertions, I find I am more persuaded by Dr. Lee's opinion. Moreover, the treating chiropractor's opinion should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the equipment provided.

Accordingly, Applicant is awarded \$1346.76, the entirety of its claim.

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
		08/25/21 - 08/25/21	\$1,346.76	Awarded: \$1,346.76
<b>Total</b>			<b>\$1,346.76</b>	<b>Awarded: \$1,346.76</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/26/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid from January 26, 2022, the date of the request for arbitration, for the Claim awarded above at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

The insurer shall pay an attorney's fee of 20% of the claim awarded above plus interest in accordance with 11 NYCRR 65-4.6.

- 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 New York

SS :

County of Westchester

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

10/17/2022  
(Dated)

Robyn McAllister

#### **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:**  
c51149149d20f7dba4dce7b8f51c9a2b

**Electronically Signed**

Your name: Robyn McAllister  
Signed on: 10/17/2022