American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LDU Therapy Inc. (Applicant)	AAA Case No.	17-16-1033-7109
	Applicant's File No.	1843629
- and -	Insurer's Claim File No.	52717P889
	NAIC No.	25178
State Farm Mutual Automobile Insurance Company (Respondent)		

ARBITRATION AWARD

I, Regina Anzalone Kurz, 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: The injured party.

1. Hearing(s) held on 10/24/2017
   Declared closed by the arbitrator on 10/24/2017

   Ryan Berry, Esq. from Israel, Israel & Purdy, LLP participated in person for the Applicant

   Mohammed Rubbani, Esq. from Richard T. Lau & Associates participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,455.73**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant's attorney amended the demand to the sum of $1,975.42 at the hearing held before this Arbitrator, with her permission.

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

3. Summary of Issues in Dispute

   No-Fault health benefits claimed for durable medical equipment in the form of a Sustained Acoustic Medicine unit (SAM) provided to the injured party, a 46-year-old woman, during the period of December 22, 2015 through February 2, 2016 following

her involvement in an automobile accident on August 26, 2015. Respondent partially denied these benefits based upon a fee objection.

4. Findings, Conclusions, and Basis Therefor

As per 11 NYCRR Section 65-4.2(3)(iii), often referred to as the "Rocket Docket," the written record is deemed closed upon receipt of the respondent's submissions OR the expiration of the time period set forth for same, 30 calendar days. Documents received by the American Arbitration Association after the close of conciliation and marked "late" were not considered by the undersigned in making this Award.

It is well-settled that a health care provider establishes its *prima facie* entitlement to No-Fault Benefits under Article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See Mary Immaculate Hospital v. Allstate Insurance Co., 5 AD3d 742 (2nd Dept.2004); Amaze Medical Supply v. Eagle Insurance, 2 Misc. 3d 128A 784 NYS2d 918, 2003 N.Y. Slip Op. 251701U [App.Term, 2d& 11th Jud. Dists.]. I find that Applicant has met its *prima facie* threshold.

The carrier asserts a fee objection for the equipment. It has been held that Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 13 Misc.3d 172, 822 N.Y.S.2d 378 (Civ. Ct. Kings Cty.2006); Power Acupuncture PC v. State Farm Mutual Auto. Ins. Co., 11 Misc.3d 1065(A), 816 N.Y.S.2d 700 (Civ. Ct. Kings Cty. 2006). If Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claims were in excess of the appropriate fee schedules, Respondent's defense of noncompliance with the appropriate fee schedules cannot be sustained. See Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't. per curiam, 2006).

Respondent has offered no expert evidence to support its fee reduction. On the other hand, Applicant has submitted a sworn Affidavit from Mary Beth Perdikos, an expert in fee coding employed by Applicant's attorneys. Ms. Perdikos stated therein that the carrier had improperly reimbursed the provider in the sum of $18.89 per day, but the rate available to the general public is $64.83 per day. In her opinion, Applicant is entitled to a total balance of $1,975.42, which is the difference between the amount already reimbursed, $812.27, and the amount billed for the 43-day rental of the SAM unit, $2,787.69.

New York State Department of Health has not established a monthly rental fee for the disputed durable medical equipment rented herein, nor are these items listed in the Medicaid fee schedule.

The applicable statute, 12 NYCRR 442.2(b) provides, in pertinent part: The maximum permissible monthly rental charge for such equipment, supplies and services provided on a rental basis shall not exceed the lower of the monthly charge to the general public or the price determined by the New York State Department of Health area office. The total accumulated monthly rental charges shall not exceed the fee amount allowed under the Medicaid fee schedule." Thus, the maximum allowable monthly rental charge is "the monthly charge to the general public."

Upon review of the record, I find that the evidence favors Applicant, as to matters of law and fact. To wit, I find that I am persuaded by that of Applicant's fee coder. Respondent has not demonstrated that Applicant's charges exceeded those charged to the general public. I am not persuaded that the Medicare rate, and that which is applicable to the general public, are one and the same. As such, I find that the fee schedule defense has not been sustained. Inasmuch as Respondent has failed to meet its burden, the claim is awarded in its entirety.

Pursuant to the Regulations, the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any party or witness or raise any issue that she deems relevant to rendering an Award that is consistent with the Insurance Law and the Regulations. 11 NYCRR Section 65-4.5 (o) (1).

Therefore, based upon the foregoing, Applicant is awarded No-Fault health benefits in the sum of $1,975.42; interest pursuant to B below; attorneys' fees pursuant to C below; plus the return of Applicant's $40.00 filing fee pursuant to D below.

This case is subject to the provisions as to attorney fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance regulation 68-D). Interest is awarded from the date of filing, at the rate of two percent per month, not compounded, on a pro-rata basis.

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**	**Amount Amended**	**Status**
	LDU Therapy Inc.	**12/22/15 - 02/02/16**	**$2,455.73**	**$1,975.42**	**Awarded: $1,975.42**
Total			**$2,455.73**		**Awarded: $1,975.42**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 04/27/2016, which is a relevant date only to the extent set forth below.)

Interest is awarded from the date of filing, at the rate of two percent per month, not compounded, on a pro-rata basis.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fees promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance regulation 68-D).

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 Suffolk

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

10/31/2017
(Dated)

Regina Anzalone Kurz

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:
b33903a697f69905586c819872441632

Electronically Signed

Your name: Regina Anzalone Kurz
Signed on: 10/31/2017