American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Avenue C Medical PC (Applicant)	AAA Case No.	17-16-1026-0635
	Applicant's File No.	83129
- and -	Insurer's Claim File No.	20002112413
	NAIC No.	22268
Infinity Insurance Company (Respondent)		

ARBITRATION AWARD

I, Joseph Endzweig, 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: claimant

1. Hearing(s) held on 01/31/2017, 08/09/2017, 12/05/2017
   Declared closed by the arbitrator on 12/05/2017

   Naomi Cohn, Esq. from Ursulova Law Offices P.C. participated in person for the Applicant

   Daniel Fuentes, Esq. from Freiberg, Peck & Kang, LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,040.26**, 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

   This arbitration arises out of treatment of a 23 year old male for injuries sustained in a motor vehicle accident which occurred on 11/15/13. Applicant seeks reimbursement for physical therapy services provided from 4/1/14 to 8/20/14 billed at $2,040.26 in total. The bill for dates of service 4/1/14 to 4/30/14 in the amount of $719.27 was reduced to $243.29 based on fee schedule grounds. The bill for dates of service 6/3/14 to 6/24/14 in the amount of $471.12 was denied based on fee schedule grounds. The bill for dates of service 7/1/14 to 7/31/14 in the amount of $365.93 was denied based on the 8 unit rule

and the IME of Dr. Frida Goldin dated 6/4/14. The bill for date of service 7/7/14 in the amount of $537.97 was denied based on the Goldin IME. The bill for dates of service 8/4/14 to 8/20/14 in the amount of $189.26 was also denied based on the Goldin IME.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing.

This arbitration arises out of treatment of a 23 year old male for injuries sustained in a motor vehicle accident which occurred on 11/15/13. Applicant seeks reimbursement for physical therapy services provided from 4/1/14 to 8/20/14 billed at $2,040.26 in total. The bill for dates of service 4/1/14 to 4/30/14 in the amount of $719.27 was reduced to $243.29 based on fee schedule grounds. The bill for dates of service 6/3/14 to 6/24/14 in the amount of $471.12 was denied based on fee schedule grounds. The bill for dates of service 7/1/14 to 7/31/14 in the amount of $365.93 was denied based on the 8 unit rule and the IME of Dr. Frida Goldin dated 6/4/14. The bill for date of service 7/7/14 in the amount of $537.97 was denied based on the Goldin IME. The bill for dates of service 8/4/14 to 8/20/14 in the amount of $189.26 was also denied based on the Goldin IME.

According to the records submitted, the claimant was riding his bicycle when a driver pulled over and the door on the right hand side opened as he passed by. He claimed that he hit his back on a parked car. He sustained injuries to his neck, lower back, right shoulder and right knee. The claimant states he had no loss of consciousness. He did receive lacerations to the left index finger. He states that he went to the Emergency Room via ambulance where x-rays were performed of his right shoulder and chest. He did receive stitches and he was released the same day. Subsequently the claimant received physical therapy, chiropractic treatment and acupuncture treatments. He underwent right knee surgery on 2/12/14.

Firstly, Respondent argues that Pennsylvania law should apply in this case since the relevant insurance policy was negotiated and entered into in Pennsylvania, by the insured who claimed to live in Pennsylvania, for a vehicle that was registered in Pennsylvania, and allegedly garaged in Pennsylvania. Respondent maintains that for cases initiated in a New York court, "[a] conflict of law relating to an insurance policy must be resolved by applying the conflict of law rules relevant to contracts" (emphasis added). Careplus Med. Supply, Inc. v. Selective Ins. Co. of America, 890 N.Y.S.2d 258, 259-260 (2nd Dept.: 9th & 10th Jud. Dists. 2009) citing Zurich Ins. Co. v. Shearson, Lehman, Hutton, Inc., 84 N.Y.2d 309, 319 (1994); Matter of Allstate Ins. Co. [Stolarz-New Jersey Mfrs. Ins. Co.], 81 N.Y.2d 219, 226, (1993). Respondent notes that the Court of Appeals cases cited by the Careplus court adopt the "grouping of contacts" approach, which gives controlling effect to the law of the state that has the most significant relationship to the transaction and the parties.

Applicant notes that the claimant is a resident of New York, the accident occurred in New York, the EIP was a bicyclist at the time of the accident, the EIP received all his medical treatment in New York, and that Respondent issued NY NF-10 denials in this case. In its brief Applicant argues that it is well-settled that when an insurance carrier issues New York denials it waives any defense it may have had in regard to choice of law. In a case involving the same insurance carrier as here, Master Arbitrator Frank Godson wrote: "If respondent intended to take the position that the New York statute and regulation did not apply, it had a duty to do so upon receipt of applicant's (or any other claimant's) claim, either by moving in court to quash the claim or by specifically stating its defense. General Accident Insurance Group v. Cirucci, 46 NY2d 862, 864; Amaze Medical Supply v. Allstate, 3 Misc.3d 43 (Appellate Term, Second Department, 2004) at page 44. Upon failure to do so, the defense is waived. Nyack Hospital v. Metropolitan Property & Casualty Insurance Co., 16 AD3d 564 (Second Department, 2005)." Further, the master arbitrator held: "By failing to state that New York law did not apply, and instead issuing a New York NF-10 form, respondent waived its right to reject the procedural requirements of the New York regulation and, as pointed out by applicant's attorney, used item 2 on page 2 of the denial to invite applicant to submit the dispute to arbitration in New York." Master Arbitrator Godson concluded: "As a result, respondent is bound by the procedural requirements of the New York regulation, and upon its failure to comply with those requirements, its denial is defective." Master Arbitrator Frank Godson, Big Apple Ortho Products Inc. v. Infinity Leader Insurance Company, AAA 17 991 R 56280 14. Applicant further notes that the facts in the case at hand tend to favor the application of New York law even more than the facts in the Godson case. In the Godson case, the respondent had issued its policy to the EIP, who apparently at the time had a Pennsylvania address. Here the EIP is a New York resident who was riding his bicycle in New York when he was hit by the car. It is further noted that Respondent is authorized to do business in New York. Applicant maintains that the carrier has therefore subjected itself to New York law when its insured enters New York and is involved in an accident.

I agree with Applicant's argument and find that New York law should apply in this case.

Dates of Service 4/1/14 to 4/30/14

Respondent received Applicant's bill in the amount of $719.27. Respondent paid $243.29 and issued an NF-10 with box "Fees not in accordance with fee schedule" checked off." The record does not contain an EOB or any explanation for the reduction.

Respondent has the burden to come forward with competent evidentiary proof to support its fee schedule defenses. Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 13Misc.3d 172, 822NYS2d 378 (Civil Court, Kings Co. 2006). See also, Power Acupuncture PC V. State Farm Mutual Automobile Ins. Co., 11 Misc. 3d 1065A, 816 NYS2d 700.

Respondent has submitted nothing in support of its fee schedule defense. Respondent has therefore failed to meet its burden of proof.

Dates of Service 6/3/14 to 6/24/14

Respondent received Applicant's bill in the amount of $471.12. Respondent denied the bill by issuing an NF-10 with box "Fees not in accordance with fee schedule" checked off." Again the record does not contain an EOB or any explanation of the reason why the fees were not in accordance with the fee schedule.

Respondent has therefore failed to meet its burden of proof.

Dates of Service 7/1/14 to 7/31/14

Respondent received Applicant's bill in the amount of $365.93. Respondent issued an EOB denying the claim based on the 8 unit rule and the IME of Dr. Goldin. However Respondent did not issue an NF-10. Moreover with respect to the 8 unit rule Respondent neglected to provide any documentation regarding the identity of the provider who received payment for the 8 units. In addition although a general denial was issued on 6/16/14 denying all further benefits based on the IME of Dr. Goldin, that denial was not served on the Applicant. Applicant therefore did not have notice of the denial at the time the services were rendered. The earliest date that benefits may be cut off prospectively based on the findings of an IME is the date that the denial is sent to the applicant for benefits." (New York State Insurance Department Office of General Counsel Opinion Letter, dated 2/14/2005). In Matthew Anselmo LMT v. Geico Insurance Company, (AAA #412013113960), Arbitrator Philip Wolf noted: "Counsel for Applicant asserts that it should have been carbon copied on the April 8, 2013 general denial but was not, despite the fact that Respondent was on notice that Applicant was rendering services to Assignor. " The arbitrator continued, "I find that the evidence reveals that Applicant did not receive proper notice of the IME cut-off." He then concluded, "based on the foregoing, I find that Applicant was not timely notified of the IME cut-off and therefore, I find that the April 10, 2013 IME cut-off is not applicable to the remaining dates of service in dispute." In the instant case Respondent's first notice to Applicant of the IME cutoff was dated 9/10/14. Respondent acquired notice that Applicant was a treating provider on 5/19/14 when it received Applicant's bill for dates of service 4/1/14 to 4/30/14.

In view of the foregoing Respondent's EOB cannot be sustained.

Date of Service 7/7/14

According to Respondent's denial Respondent received Applicant's bill in the amount of $537.97 on 8/19/14. Respondent's denial is dated 10/2/14. The denial is clearly late. 11 NYCRR Section 65-3.8, Payment or denial of claim (30 day rule) provides:

> (a) (1) No-Fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this subpart. In the

case of an examination under oath or a medical examination, the verification is deemed to have been received by the insurer on the day the examination was performed.

(c) Within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part.

In view of the foregoing Respondent's denial cannot be sustained.

Date of Service 8/4/14 to 8/20/14

Respondent received Applicant's bill in the amount of $189.26 on 9/15/14. Respondent timely denied payment on 9/30/14 based on the Goldin IME. Again at the time the services were rendered Applicant did not have notice of the IME cut-off. Respondent's first notice to Applicant of the IME cutoff was dated 9/10/14. Respondent had notice that Applicant was a treating provider on 5/19/14 when it received Applicant's bill for dates of service 4/1/14 to 4/30/14.The general denial was not served on Applicant. In view of the foregoing the denial cannot be sustained.

Accordingly, I find in favor of the Applicant and award the sum of $2,040.26.

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**
	Avenue C Medical PC	**04/01/14 - 08/20/14**	**$2,040.26**	**Awarded: $2,040.26**
Total			**$2,040.26**	**Awarded: $2,040.26**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 01/11/2016, which is a relevant date only to the extent set forth below.)

   Interest shall run from date of filing.

C. Attorney's Fees

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

   The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(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 Nassau

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

12/05/2017
(Dated)

Joseph Endzweig

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:
4ccabac20d839811319346fec89803b6

Electronically Signed

Your name: Joseph Endzweig
Signed on: 12/05/2017