American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hudson Valley Chiro & Rehab, PC (Applicant)	AAA Case No.	17-17-1054-6350
	Applicant's File No.	none
- and -	Insurer's Claim File No.	04235449552HH
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Kent Benziger, 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: J.C.

1. Hearing(s) held on 11/24/2017, 02/02/2018
   Declared closed by the arbitrator on 02/02/2018

   Jeffrey Datikashvili, Esq. from Gene Sigalov Esq. participated by telephone for the Applicant

   Roger Sisser, Esq. from Allstate Fire & Casualty Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,367.45**, 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

   1) Whether the Applicant, Hudson Valley Chiropractic & Rehabilitation, P.C. has made a prima facie showing of necessity for lower extremity EMG/NCV studies as well as billing for H reflex studies in the upper extremity. 2) Whether, based on a peer review from Dr. Ajendra Sohal, the Respondent has established the lack of necessity for the studies based for lower extremity EMG/NCV studies as well as an H-reflex study in the upper extremity.

   This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the

records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

4. Findings, Conclusions, and Basis Therefor

On August 1, 2016, the Assignor/Eligible Injured party, was, by history, involved in a motor vehicle accident. Following the accident, the Assignor reportedly was not evaluated and did not go to the emergency room. Two days later, the Assignor sought treatment with his primary physician who, in turn referred him to Dr. Mark Levano for neck and low back pain radiating to the extremities. The Assignor past medical history was significant for three neck surgeries and for his having Type II diabetes.

On September 21, 2016, the Assignor was evaluated by Dr. Drag for severe neck pain, headaches and pain radiating into both arms and elbows. On examination, the Valsalva was positive. Cervical range of motion was decreased by 20 percent. Muscle weakness was noted in the left and right hand, graded a 4/5. Deep tendon reflexes were sluggish on the right biceps and brachioradialis, graded +1. Abnormal sensation was noted over the left/right C5/C6/C7 dermatomes and posterior hands. Cervical compression was positive for reproducing neck pain. Dr. Drag noted a cervical MRI or CT scan was pending. The impression as of neuropathy, cervical radiculopathy, brachial plexopathy, nerve root compression, carpal tunnel compression, paresthesia, peripheral neuropathy, and cervical disc. The basis for performing an EMG/NCV study was to differentiate between diabetic peripheral neuropathy versus radiculopathy and to rule out axonal degeneration. The study was interpreted as revealing evidence of mild right carpal tunnel syndrome and peripheral neuropathy of bilateral upper extremities due to Type II diabetes and moderate acute C6 radiculopathy on the left. The patient was determined to be a candidate for pain management.

As to the lower extremity, the Assignor complained of moderate to severe lower back pain radiating into the left hip, leg and knee. On examination, the Assignor had a positive Valsalva, lumbar range of motion was decreased in right/left lateral flexion and extension. Muscle weakness of right plantar flexor was noted, graded 4/5. Straight leg raising exacerbated back and leg pain on right at 50 degrees. Yeoman's and Kemp's test were positive. Deep tendon reflexes were sluggish over the Achilles bilateral. Sensation was abnormal over the right L4/L5/S1 dermatomes. Hypoesthesia was noted over the left L5/S1 dermatomes. Lumbar MRI was pending. The impression was of lumbar radiculopathy, neuropathy, sciatic neuropathy, paresthesia, stenosis and lumbar disc. An EMG study was recommended to rule out diabetic neuropathy versus radiculopathy, rule out a surgical consult, rule out axonal degeneration. The actual report was partially cut off, but appeared to list a further reason for the study. The study revealed evidence of

peripheral neuropathy of the bilateral lower extremities and moderate S1 radiculopathy on the left.

The Respondent issued a denial for the studies based on the accompanying peer review of Dr. Ajendra Sohal, a physiatrist. He comments that CPT 95861 was billed twice, and questioned why so many F waves and other tests were performed. He stated it is "almost impossible" to have a motor vehicle accident induced radiculopathy at six dermatomes or nerve roots with no surgical emergency. Dr. Sohal opined that both the findings of mild carpal tunnel and peripheral neuropathy were pre-existing. He questioned why the clinical findings did not match the tests results. He further opined that the lower extremities showed vague and nonspecific complaints.

In conclusion, he permitted reimbursement of the upper extremity study except for an H-reflex study, but denied reimbursement for the lower extremity studies.

Analysis. Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), A prima facie case of entitlement to No-Fault compensation is made out where the evidence proves that a clamant submitted proof of claim and that the billed amount was not paid within 30 days. Westchester Medical Center v. Lincoln General Ins. Co., 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009); Westchester Medical Center v. Clarendon National Ins. Co., 57 A.D.3d 659, 868 N.Y.S.2d 759 (2d Dept. 2008).. The Respondent then bears the burden to prove that the treatment was not medically necessary Kings Med. Supply Inc. v. Country-Wide Ins., 5 Misc.3d 767 (2004); Behavioral Diagnostics v. Allstate Ins. Co., 3 Misc.3d 246 (2004); A.B. Med. Servs v. Geico Ins. 2 Misc.3d 16 (App. Term 2d Dept. 2003). In this case, the peer review must submit "objective testimony or evidence to establish that his opinion is what is generally accepted in the medical profession." Williamsbridge Radiology v. Travelers, 14 Misc.3d 1231(a) (Civ. Ct Kings Co. 2007). When a carrier uses a peer review as basis for the denial, the report must contain evidence of the applicable generally accepted medical/professional standards as well as the provider's departure from those standards. Acupuncture Prima Care v. State Farm Mut. Auto Ins. Co. 17 Misc. 3d 1135 (Civ. Ct. Nassau, 12/03/07). Therefore, a peer reviewer must thoroughly review the relevant medical records and give evidence of generally accepted medical standards. Then, through careful analysis, the peer reviewer must apply those standards to the facts to document that the treatment in question was not medically necessary. See: CityWide Social Work & Psychological Services v. Travelers Idem. Co., 3 Misc.3d 608, 609 (Civil Ct. Kings Co. 2004).

As a finding of fact, the peer review is not persuasive. Except for one source pertaining to testing necessary for unilateral carpal tunnel syndrome, Dr. Sohal has failed to cite relevant authoritative sources to support his contention that it would be contrary to good and accepted practice to prescribe the studies in dispute. As noted in by Nir v. Allstate Insurance Company, 7 Misc.3d 544, 546, 547 (2005):

> A peer review report's medical rationale is insufficient if it is unsupported by or controverted by evidence of medical standards. For example, the medical rationale may be insufficient if not supported by evidence of the "generally accepted medical/professional practice." (*Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d 608, 777 N.Y.S.2d 241, 2004 NY Slip Op 24034 [Civ Ct, Kings County 2004]*.)

In sum, Dr. Sohal's statements are conclusory. He states CPT 95861 was billed twice, but fails to explain why it is improper pursuant to the fee schedule to perform separate upper and lower needle electromyography studies as they both involve two extremities. Similarly, a statement that "so many F waves and other testing were performed" does not sustain the Respondent's burden of proof as to lack of medical necessity without an additional explanation and reference to a source. He fails to support any basis for a denial of H-reflex studies.

The peer review contends that the findings of carpal tunnel and peripheral neuropathy were pre-existing. Yet, Dr. Sohal failed to address Dr. Drag's contention that the study was due, in part, to a differential diagnosis that included peripheral neuropathy due to the history of diabetes and radiculopathy. Further, even in a condition is pre-existing, an exacerbation of a pre-existing condition due to a motor vehicle accident is covered under the No-Fault law. Kingsbrook Jewish Medical Center v. Allstate Insurance Co., 61 A.D.3d 13 (2d Dept. 2009). Finally, Dr. Sohal failed to address or adequately discuss the numerous positive clinical findings as well as the findings of the lower study which found both peripheral neuropathy and moderate S1 radiculopathy. A peer review must incorporate, discuss and review the patient's medical history including all positive clinical and diagnostic findings. Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co., 19 Misc.3d 1139(A), (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008). Applicant is awarded reimbursement for the treatment in dispute.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(c)(e), the Applicant is awarded 20 percent of the amount of the first

party-benefits, with no minimum fee and a maximum $1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

APPLICANT IS AWARDED REIMBURSEMENT OF $1,367.45, FOR LOWER EXTREMITY EMG/NCV STUDIES AND H-REFLEX STUDIES, TOGETHER WITH INTEREST AND ATTORNEY'S FEES.

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**
	Hudson Valley Chiro & Rehab, PC	**09/21/16 - 09/21/16**	**$1,367.45**	**Awarded: $1,367.45**
Total			**$1,367.45**	**Awarded: $1,367.45**

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 02/03/2017, which is a relevant date only to the extent set forth below.)

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(c)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum $1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

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 Orange

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

02/13/2018
(Dated)

Kent Benziger

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:
9e1aa21fed1a2378da2dfe1a20e69dcc

Electronically Signed

Your name: Kent Benziger
Signed on: 02/13/2018