American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

M&E General Supply Inc (Applicant)	AAA Case No.	17-18-1108-6176
	Applicant's File No.	n/a
- and -	Insurer's Claim File No.	0446688180101085
	NAIC No.	22063
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Michelle Entin, 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 05/21/2020
   Declared closed by the arbitrator on 05/21/2020

   Tiffany Bogosian, Esq., from Law Offices of Zara Javakov, Esq. P.C. participated by telephone for the Applicant

   Lane Thorson, Esq., from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,150.00**, 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 Applicant is entitled to reimbursement of $1150.00 for medical supplies provided tothe injured party/Assignor, a 33 year old male, on April 10, 2018, in connection with injuries allegedly sustained by the Assignor in an automobile accident which occurred on January 7, 2018.

   Respondent has denied this claim based upon the peer review report of Albert Tse, M.D., dated April 30, 2018.

4. Findings, Conclusions, and Basis Therefor

This decision is based upon the written submissions and oral arguments of the parties.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered andstrict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. NYCRR 65-4.5 (o) (1) (Regulation 68-D).

Initially, I find that Respondent's denial was timely issued. I have reviewed the relevant documents submitted to the Electronic Case Folder as of the date of this hearing and for the reasons as set forth below I find that Applicant is entitled to reimbursement for the custom fitted LSO supplied.

Assignor, a 33 year old male, was involved in an automobile accident on January 7, 2018 and on April 6, 2018 was prescribed an LSO APL custom fitted, by Ramy E. Hanna, M.D. The LSO was provided on April 10, 1018. Applicant submits the report of MRI of the lumbar spine which notes disc herniations at L5/S1 impressing on the ventral thecal sac and bulging discs at L2/L3 and L3/L4 and L4/L5.

Applicant now seeks reimbursement for the custom fitted LSO provided.

Applicant has established a prima facie showing of entitlement to reimbursement by submittingevidentiary proof that it submitted a claim setting forth the fact and amount of the loss sustained and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004). The burden then shifts to the Respondent to demonstrate lack of medical necessity for the services at issue. See *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co*., 8 Misc 3d 1025 A (2005).

Respondent's denial is based upon the peer review report of Albert Tse, M.D., which noted that the January 26, 2018 examination of Dr. Ramy Hanna indicated complaints of low back pain with the clinical impression of lumbosacral radiculitis and lumbosacral sprain/strain. A follow up of March 26, 2018 is also noted along with the prescription for the LSO-APL custom fitted. Dr. Tse found no evidence to support its necessity and stated that the claimant's findings could have been minimized with appropriate conservative management, including medication, physical therapy modalities exercise and patient education. Further noted was the lack of convincing evidence as to the long term effectiveness of lumbar traction in relieving symptoms or improving functional

outcome in patients with acute back pain and that the role of corsets in the treatment of patients with back pain is controversial at best.

Applicant submits a rebuttal by Ramy Hanna, M.D., which notes the findings of MRI of the lumbar spine and the Assignor's complaints and findings upon evaluation. With regard to the custom fitted LSO, same was noted to have been prescribed consistent with cited authority and was noted to be an effective treatment for low back pain.

Respondent submits an addendum by Dr. Tse which notes no prescription for analgesic agents by Dr. Hanna. Further noted was the lack of first line therapy and conservative treatment optimized with no indication as to how the combination of same could not have achieved the same goals as theorized by the medical supply.

Based upon the facts of this matter, I find the peer review insufficient to establish lack of medical necessity for the medical supply provided. The law is well settled that the burden is on the insurer to prove that medical treatment performed was not medically necessary. (See *A.B. Medical Services PLLC v. Geico Insurance*, 2 Misc.3d 26, 773 N.Y.S.2d 773 [App. Term, 2nd & 11th Jud. Dists. 2003]; *King's Medical Supply Inc. v. Country-Wide Insurance Company*, 783 N.Y.S.2d at 448). I find Dr. Tse's peer review report insufficient to meet this burden. In this regard I note that Dr. Tse has not demonstrated how Applicant deviated from generally accepted medical practice in the prescription of the LSO provided. The peer does not establish that the prescription of the disputed custom fitted LSO deviated from generally accepted medical professional standards but rather notes other types of treatment that could have minimized the findings, recurrences and functional limitations but does not set forth a deviation herein. See *Nir v. Allstate*, 7 Misc 3d 544; 796 N.Y.S.2d 857 (Civ. Ct., Kings County 2005).

In addition, the rebuttal establishes the medical necessity of the disputed custom fitted LSO.

Based upon the foregoing, the claim of Applicant is granted.

This decision is in full disposition of all claims for No-Fault benefits presently before thisArbitrator.

DECISION: AWARD IN FAVOR OF APPLICANT FOR $1150.00 FOR CUSTOM FITTED LSO.

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**
	M&E General Supply Inc	**04/10/18 - 04/10/18**	**$1,150.00**	**Awarded: $1,150.00**
Total			**$1,150.00**	**Awarded: $1,150.00**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/18/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   Respondent shall pay the Applicant interest computed from the date of filing of the AR-1at a rate of 2% per month, simple, and 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 also pay the Applicant attorney's fees upon the amount awarded and the interest, as calculated in section "B" above, and in accordance with the Regulations, for the following claim:

Claim in the amount of $1150.00

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 New York

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

06/21/2020
(Dated)

Michelle Entin

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:
1e5ac836e740c7ec10eb8b31f06afa00

Electronically Signed

Your name: Michelle Entin
Signed on: 06/21/2020