American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Village Physical Therapy, Chiropractic & Acupuncture, PLLC (Applicant)	AAA Case No.	17-19-1122-2600
	Applicant's File No.	VC-19-22056-RPT
- and -	Insurer's Claim File No.	0431660680101052
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Mitchell Lustig, 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 08/17/2020
   Declared closed by the arbitrator on 08/17/2020

   Vijay Gupta, Esq. from Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP participated in person for the Applicant

   Gerry Limone, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,293.38**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The claim was amended without objection to the sum of $831.60 to comport with the relevant fee schedule and to reflect credit for payments made by the Respondent. This amendment resovles all fee schedule disputes between the parties.

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

3. Summary of Issues in Dispute

   Whether the Respondent properly reduced the Applicant's bills in accordance with the fee schedule?

Whether the services provided to the Assignor after the IME cutoff were medically necesssary?

4. Findings, Conclusions, and Basis Therefor

In dispute is Applicant Village PT, Chiro. & Accu. PPLC's claim as the assignee of a 40-year-old female injured in a motor vehicle accident on May 26, 2017, for reimbursement in the revised sum of $831.60 for 33 sessions of physical therapy treatments performed by Augustus Agapinan, RPT for the period of June 6, 2017 to November 10, 2017.

The Respondent timely denied that portion of the claim for 26 sessions of physical therapy treatments in the sum of $400.40 for dates of service June 6, 2017 to October 4, 2017 based upon the grounds that the Applicant's bills were in excess of the fee schedule, particularly the 8- unit rule.

The Respondent timely denied the remainder of the claim for 7 sessions of physical therapy treatments in the sum of $431.20 for dates of service October 10, 2017 to November 10, 2017 based upon an orthopedic independent medical examination performed by Dr. Gary Florio on September 14, 2017 that terminated all further treatment, including physical therapy, effective October 6, 2017.

I have reviewed the documents contained in the ADR Center. This decision is based upon the submissions of the parties and the arguments made by the parties at the hearing.

It is well settled that a heath care provider establishes its prima facie entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2nd Dept. 2009); Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that the Applicant has established a prima facie case.

WHETHER THE INSURER HAS PROVEN THAT THE APPLICANT'S BILS FOR DATES OF SERVICE JUNE 6, 2017 TO OCTOBER 4, 2017 WERE NOT IN ACCORDANCE WITH FEE SCHEDULE

An insurance carrier's timely asserted defense that the bills submitted were not properly no-fault rated or that the fees charged were in excess of the Workers' Compensation Fee Schedule is sufficient, if proven, to justify a reduction in payment or denial of claim. New York Hosp. Med. Ctr. Of Queens v. Country-Wide Insurance Company, 295 A.D.2d 583, 744 N.Y.S.2d 201 (2nd Dept. 2002); East Coast Acupuncture, P.C. v. New York Central Mutual Insurance, 18 Misc.3d 139(A), 2008 N.Y. Slip Op. 50344(U) (App. Term 2nd and 11th Jud. Dists. 2008); A.B. Medical Services, PLLC v. American Transit Insurance Company, 15 Misc.3d 132(A), 2007 N.Y. Slip Op. 50680(U) (App. Term 2nd and 11th Jud. Dists. 2007).

The insurer has the burden of coming forward with competent evidentiary proof to support its fee schedule reduction or denial. See, e.g., Roberts Physical Therapy, P.C. v. State Farm Mutual Automobile Insurance Company, 13 Misc.3d 172, 3006 N.Y. Slip Op. 26240 (N.Y. Civ. Ct. Kings Co. 2006).

In the absence of such proof, a defense of noncompliance with the appropriate fee schedule cannot be sustained. Continental Medical, P.C. v. Travelers Indemnity Company, 11Misc,3d 145(A), 2006 N.Y. Slip Op. 50841(U) (App. Term 1st Dept. 2006).

I am permitted to take judicial notice of the Workers' Compensation Fee Schedule. See Kingsbrook Jewish Medical Center v. Allstate Insurance Company, 61 A.D.3d 13, 20 (2nd Dept. 2009); LVOV Acupuncture, P.C. v. Geico Ins. Co., 32 Misc.3d 144(A), 2011 N.Y. Slip Op. 51721(U) (App. Term 2nd, 11th and 13th Nudists. 2011); Natural Acupuncture Health, P.C. v. Praetorian Ins. Co., 30 Misc.3d 132(A), 2011 N.Y. Slip Op. 50040(U) (App. Term 1st Dept. 2011).

With regard to 26 dates of service for the period of June 6, 2017 to October 4, 2017, the Respondent paid Applicant the sum of $46.20 for each date of service or for 6 units and denied the remaining sum of $15.40 or two units based upon the 8-unit rule contained in Physical Medicine Ground Rule 11 which provides that "when multiple physical medicine procedures and/or modalities are performed on the same day, reimbursement is limited to 8.0 RVUs or the amount billed, whichever is less".

Indeed, an insurer which has already paid for eight (8) units of physical medicine procedures and modalities listed in Physical Medicine Ground Rule 11 can assert its prior payment as a limitation when another provider bills for a physical medicine procedure performed on the same day. See Liberty Chiropractic, P.C. v. 21st Century Ins. Co., 2016 N.Y. Slip Op. 51409 (App. Term 2nd, 11th and 13th Jud. Dists. 2016)

In the within matter, with the exception of date of service August 11, 2017 in the sum of $15.40, the Applicant has submitted satisfactory proof in the form of Explanation of Benefits showing that for dates of service June 6, 2017 to October 4, 2017, it made payments to the within named provider for chiropractic treatments (CPT Code 97012)

provided to the Assignor which used up the maximum 8 RVU's permitted to be billed per day. Accordingly, with the exception of date of service August 11, 2017, the Applicant is not entitled to any reimbursement for the latter dates of service.

However, with regard to date of service August 11, 2017, the Applicant has failed to submit proof that it made payments to the within named provider or another provider that used up the 8RVUs permitted to be billed under Physical Medicine Ground Rule 11. Accordingly, the Applicant is awarded additional sum of $15.40 for date of service August 11, 2017.

The Respondent timely denied the remainder of the claim for seven dates of service for the period of October 10, 2017 to November 10, 2017 based upon an orthopedic independent medical examination performed by Dr. Gary Florio on September 14, 2017.

In the event that an insurer relies on a peer review report or independent medical examination to demonstrate that a particular service was medically unnecessary, the medical expert's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. In addition, the expert's must be supported by evidence of generally accepted medical/professional practice or standards. Nir v. Allstate Insurance Company, 7 Misc3d 544, 2005 N.Y. Slip Op. 25090 (N.Y. Civ. Ct. Kings Co. 2005). "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." A.B. Medical Services, PLLC v. New York Central Mutual Fire Insurance Company, 7 Misc.3d 1018(A), 2005 N.Y. Slip Op. 50662(U) (N.Y. Civ. Ct. Kings Co. 2005). The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3 Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. Kings Co. 2004).; Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance Company, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App. Term 2nd and 11th Jud. Dists. 2008.

The Assignor presented to Dr. Florio on September 14, 2017. Although Dr. Florio noted the Assignor's complaints of pain in her middle back and low back, upon examination he observed full range of motion in the Assignor's cervical spine and lumbar spine. The Spurling's test and Straight Leg Raising test were negative. In addition, Dr. Florio found that deep tendon reflexes, muscle strength and sensation in the upper and lower extremities were normal. Based upon his examination, Dr. Florio found that the Assignor's injuries were resolved and he concluded that no further treatment, including physical therapy, was medically necessary

I find that Dr. Florio's IME report sets forth an adequate factual basis and medical rationale for the rejection of the post-IME cutoff bills and is sufficient to rebut the presumption of medical necessity attached to them. East Coast Acupuncture Services, P.C. v. American Transit Insurance Company, 14 Misc.3d 135(A), 2007 N.Y. Slip Op. 50213(U) (App. Term 1st Dept. 2007).

Hence the burden shifts to the applicant for no-fault benefits to refute the IME report and prove the medical necessity of the disputed services. AJS Chiropractic, P.C. v. Mercury Insurance Company, 22 Misc.3d 133(A), 2009 N.Y. Slip Op. 50208(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2009); NYC East-West Acupuncture, P.C. v. Maryland Casualty Insurance Company, 20 Misc.3d 143(A) 2008 N.Y. Slip Op. 51762(U) (App. Term 2nd. 11th and 13th Jud. Dists. 2008); West Tremont Medical Diagnostic, P.C. v. Geico, 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2nd and 11th Jud. Dists. 2006).

To rebut the IME, the Applicant has submitted progress/treatment notes for the dates of service in dispute as well as a Final Comprehensive Narrative Report dated July 1, 2018 from Frederick Giovanelli, D.C. and Richard Amato, D.C.

However, the progress/treatment notes do not contain any information which persuasively refutes the conclusion of Dr. Florio that the Assignor's condition had resolved as of the date of his IME on September 14, 2017 and the Final Comprehensive Narrative Report is dated July 1, 2018, which is 8 months **after** the Assignor's last date of treatement on November 10, 2017.

The conflicting medical expert opinions adduced by the parties sufficed to raise an issue as to the medical necessity of the treatment underlying the provider's first-party no-fault claim. See Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013).

Upon consideration of the evidence, I find that the Applicant has submitted insufficient medical documentation to refute Dr. Florio's determination that the Assignor's condition had resolved as of the date of his IME on September 14, 2017 and that no further treatment, including physical therapy, was necessary.

Accordingly, the Respondent's denials premised upon lack of medical necessity for that portion of the claim for dates of service October 10, 2017 to November 10, 2017 are upheld and the Applicant is denied reimbursement for same. See Synergy Medical v. Praetorian Insurance Company,40 Misc.3d 127(A), 2013 N.Y. Slip Op. 51047(U) (App. Term 1st Dept. 2013); Hong Tao Acupuncture, P.C. v. Praetorian Insurance Company, 35 Misc.3d 131(A), 2012 N.Y. Slip Op. 50678(U) (App. Term 2nd, 11th and 13th Jud.Dists. 2012).

Based upon the foregoing, I find in favor of the Applicant in the sum of $15.40

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**
	Village PT, Chiro. & Acu. PLLC	**06/06/17 - 06/07/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**06/09/17 - 06/12/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**06/13/17 - 06/14/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**06/16/17 - 06/19/17**	**$59.72**	**$15.40**	**Denied**

	Village PT, Chiro. & Acu. PLLC	**07/10/17 - 07/11/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**07/12/17 - 07/17/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**07/18/17 - 07/21/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**08/11/17 - 08/14/17**	**$44.32**	**$15.40**	**Awarded: $15.40**
	Village PT, Chiro. & Acu. PLLC	**08/16/17 - 08/21/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**08/23/17 - 08/25/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**09/08/17 - 09/11/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**09/12/17 - 09/13/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**10/02/17 - 10/04/17**	**$59.72**	**$15.40**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**10/10/17 - 10/11/17**	**$152.12**	**$61.60**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**10/17/17 - 10/23/17**	**$152.12**	**$61.60**	**Denied**
	Village PT, Chiro. & Acu. PLLC	**10/24/17 - 10/24/17**	**$76.06**	**$61.60**	**Denied**
	Village PT,				

	Chiro. & Acu. PLLC	**11/07/17 - 11/10/17**	**$152.12**	**$61.60**	**Denied**
Total			**$1,293.38**		**Awarded: $15.40**

B. The insurer shall also compute and pay the applicant interest set forth below. 03/06/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall pay interest on the claim from March 6, 2019, the date that arbitration was requested, until such time as payment is made.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of $1,360.00. See 11 NYCRR 65-4.6(d). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(b).

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

08/21/2020
(Dated)

Mitchell Lustig

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:
c1e021b407ec990b78f55990cf6f5a4a

Electronically Signed

Your name: Mitchell Lustig
Signed on: 08/21/2020