American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mt. Sinai Medical Supply Inc. (Applicant)	AAA Case No.	17-19-1130-5071
	Applicant's File No.	n/a
- and -	Insurer's Claim File No.	LA000-038418080-01
	NAIC No.	36447
LM General Insurance Company (Respondent)		

ARBITRATION AWARD

I, Nancy S. Linden, 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: SM

1. Hearing(s) held on 01/20/2021
   Declared closed by the arbitrator on 01/20/2021

   Ian Besso, Esq. from The Sigalov Firm PLLC participated by telephone for the Applicant

   Melissa Coppola from LM General Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,346.76**, 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

   The Assignor, SM, a 29-year-old male, was the driver of a motor vehicle involved in a motor vehicle accident on October 5, 2018. Following the accident, SM sought and received treatment including durable medical equipment, to wit, a cervical traction unit (CTU) and lumbosacral orthosis (LSO) provided on December 27, 2018. Applicant billed Respondent for charges related to the aforementioned service. Thereafter, Respondent timely denied Applicant's claim based upon the January 23, 2019 peer review of Ji Hoon Kim, DC, LAc. The issue presented is whether Respondent properly denied Applicant's bill based upon a lack of medical necessity.

4. Findings, Conclusions, and Basis Therefor

The case was decided based upon the submissions of the parties contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives made at the arbitration hearing. There were no witnesses.

Applicant established its prima facie entitlement to reimbursement for no fault benefits based upon the submission of a properly completed claim form setting forth the amount of the loss sustained and that payment is overdue. Mary Immaculate Hospital v. Allstate Ins. Co, 5 AD 3d 742, (2d Dept. 2004). Westchester Medical Center v. Lincoln General Ins. Co, 60 AD 3d 1045 (2d Dept. 2009). Therefore, the burden now shifts to Respondent to prove its defense that services were not medically necessary. A.B. Medical Servs., PLLC v. Lumbermens Mut. Cas. Co., 4 Misc.3d 86, 87 (App. Term, 2nd Dep't 2004); King's Med. Supply, Inc. v. Country-Wide Ins. Co., 5 Misc.3d 767, 771 (Civ. Ct. Kings Co. 2004); Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2 Misc.3d 128(A) (App Term 2nd and 11th Jud. Dists. 2003).

In order to support a lack of medical necessity defense Respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014). Respondent bears the burden of production in support of it lack of medical necessity defense, which if established shifts the burden of persuasion to Applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

In support of its contention that the provided durable medical equipment was not medically necessary Respondent relies on the peer review of Ji Hoon Kim, DC, LAc. Dr. Kim asserts that, based on the medical records reviewed and medical authority cited, these items were not medically necessary. Specifically, as to the LSO, "the claimant did not sustain any type of injury that would indicate the need for an LSO". He explains that "it is a well-known principle of current clinical practice that the goal of rehabilitative therapy is to increase mobility and to limit mobility only in cases of more serious injury such as for example cases of lumbar instability, fracture and for post-surgical cases". Dr. Kim opines that "it is counterproductive to limit mobility with such a device- this would only facilitate increased stiffness and would limit the range of motion improvement that rehabilitative therapy aims to accomplish". With regard to the CTU, Dr. Kim contends that "comprehensive and adequate instructions as to how to properly, safely and effectively use the traction device were not provided when the cervical traction device was eventually recommended". He adds that "there is no evidence that the patient had any mechanical traction sessions, as part of in-office treatment to assess how effective the mechanical cervical traction unit would be". Notwithstanding Dr. Kim's assertions, his peer review is lacking in that it does not even discuss the injuries sustained by SM or the findings referring chiropractor, Jongdong Park, set forth in his initial examination of SM on October 16, 2018. In addition, Dr. Kim failed to review Dr. Park's letter of

medical necessity and SOAP notes for chiropractic treatment rendered to SM between the initial evaluation and the December 12, 2018 durable medical equipment referral. That said, Dr. Kim's general contentions and his failure to review pertinent documents obviates the credibility of his peer review. His arguments are unsupported and, thus, unavailing. Based upon the foregoing, Respondent has not set forth a cogent medical rationale in support of its lack of medical necessity defense. Consequently, the burden does not shift to Applicant.

As such, upon a preponderance of the evidence in the electronic case file and following consideration of the arguments raised at the hearing, I find that Respondent has not established its defense on this record. Applicant's claim is, therefore, granted.

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**
	Mount Sinai Medical Supply Inc.	**12/27/18 - 12/27/18**	**$1,346.76**	**Awarded: $1,346.76**
Total			**$1,346.76**	**Awarded: $1,346.76**

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

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of $850." Id. The minimum attorney fee that shall be awarded is $60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 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, Nancy S. Linden, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/03/2021
(Dated)

Nancy S. Linden

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:
13863559777d0d8588e02f5a7e872a4b

Electronically Signed

Your name: Nancy S. Linden
Signed on: 02/03/2021