

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Wellmart Rx, Inc. (Applicant)	AAA Case No.	17-20-1178-2391
- and -	Applicant's File No.	none
	Insurer's Claim File No.	0398874248 2RC
Allstate Insurance Company (Respondent)	NAIC No.	19232

ARBITRATION AWARD

I, Kevin R. Glynn, 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 02/18/2021
Declared closed by the arbitrator on 02/18/2021

Viktoriya Litvenko, Esq. from Viktoriya Litvenko, P.C. participated in person for the Applicant

John Palatianos, Esq. from Law Offices Of Karen L. Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,486.60**, 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, KG, is a 40yo male driver who was injured in a motor vehicle accident on 1/18/16. KG suffered injuries which resulted in his seeking treatment. In dispute is Applicant's claim for Cyclobenzaprine tablets, Acetaminophen/Codeine, and a compound cream provided on 2/3/16, in the total amount of \$993.94. Respondent partially paid the charges for the Cyclobenzaprine and Acetaminophen/Codeine in the amounts of \$46.34 and \$22.35 based on a fee schedule defense and denied the charge for the compound cream based on a peer review report by Dr. Isandr Dumesh, M.D., dated 3/31/16. Therefore, the medical necessity of the compound cream and if Respondent can sustain its fee schedule reduction are the issues to be determined.

Also in dispute is Applicant's claim for Naproxen, Baclofen, Acetaminophen/Codeine, and a compound cream provided on 5/6/16, in the total amount of \$2,960.19. Respondent partially paid the charges for the Naproxen, Baclofen and Acetaminophen/Codeine in the amounts of \$176.13, \$182.91 and \$39.80 based on a fee schedule defense and denied the charge for the compound cream based on a peer review report by Dr. Isandr Dumesh, M.D., dated 6/3/16. Therefore, the medical necessity of the compound cream and if Respondent can sustain its fee schedule reduction are the issues to be determined.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

I find that Applicant established a prima facie case of entitlement to reimbursement. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I also find that Respondent has established that it timely denied the claims.

Medical Necessity

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 2, 11 and 13 Jud. Dists. 2014). Respondent bears the burden of production in support of its 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). The Appellate Courts have not clearly defined what satisfies this standard except to the extent that "bald assertions" are insufficient. Amherst Medical Supply, LLC v. A Central Ins. Co., 2013 NY Slip Op 51800(U) (App. Term 1st Dept. 2013). To meet the burden of persuasion regarding medical necessity - in the absence of factually contradictory records - the applicant must submit a rebuttal which meaningfully refers to and rebuts the assertions set forth in the peer review report. See generally, Pan Chiropractic, P.C. v Mercury Ins. Co., 24 Misc 3d 136[A], 2009 NY Slip Op 51495[U] [App Term, 2d, 11th & 13th Jud Dists 2009].

Respondent's evidence established that the charges for the compound creams provided on 2/3/16 and 5/6/16 were timely denied pursuant to peer review reports by Dr. Isandr Dumesh, M.D., dated 3/31/16 and 6/3/16. Regarding date of service 2/3/16 Dr. Dumesh opines:

... The above claimant has sustained sprain/strain injuries to the spine and extremities in the above motor vehicle accident. The standard of care for similar injuries would be physical therapy and rehabilitation treatments for a period of three to four months, possibly supplemented by NSAID medications and muscle relaxers. A medication, would be necessary if it potentially enhances the treatment and speeds up the resolution of injuries.

In regards to the above Compound Cream, Cyclobenzaprine and Acetaminophen/ Codeine, I would like to comment on the following. Compound medication is not among the first line of therapy for acute musculoskeletal injuries. Anti-inflammatory medications or Acetaminophen, possibly supplemented by a muscle relaxer, would be more appropriate choices in similar circumstances. As per the article: "Lumbosacral Spine Sprain/Strain Injuries" by Andrea Radebold, MD, published on emedicine.medscape.com and updated on 10/08/2012: "The goal of pharmacotherapy is to reduce patient morbidity and prevent complications. In acute injuries, pharmacotherapy should usually not exceed 6 weeks of treatment... In the acute phase, muscle relaxants (IM injection or tablets) help to treat muscle spasms and facilitate light physical therapy. However, muscle relaxants have not been shown to shorten or alter the course of the injury process... NSAIDs are generally used to treat muscle pain in the acute and maintenance phases of treatment. These drugs usually have anti-inflammatory, analgesic, and antipyretic activities. The ability of NSAIDs to inhibit prostaglandin synthesis may be involved in the anti-inflammatory effect; these agents are indicated in the acute and maintenance phase of the pain treatment for lumbosacral injuries." Further, according to the Workers' Compensation Board Mid and Low Back Injury Medical Treatment Guidelines, Second Edition Effective March 1, 2013, under the rubric D . 7. f. Other Creams and Ointments, it is stated: "May be used for treatment of acute, subacute, or chronic back pain. However, there is no evidence of efficacy." In this case, the claimant was involved in the motor vehicle accident and had been started on multi-modality physical therapy regimen, as well as acupuncture and chiropractic therapy. In addition, the claimant was prescribed muscle relaxer (Cyclobenzaprine) and pain killer (Acetaminophen/Codeine). The above treatment course should have been sufficient for managing the claimant's musculo-skeletal injuries. There was no discussion as to

how the use of topical analgesic would help to resolve the claimant's injuries more efficiently than the standard conservative therapy regimen described above. There was no indication that the claimant was unable to tolerate oral forms of analgesics/anti-inflammatory medications and needed to switch to topical formulary to continue pharmaceutical therapy regimen. The addition of a Topical Analgesic and Anti-Inflammatory Compound Cream would not have shortened the duration of in-office therapy, improve prognosis, or otherwise benefited the claimant in this case. Therefore, the above Compound Cream was not medically necessary. However, Cyclobenzaprine and Acetaminophen/Codeine were medically necessary in this case...

Regarding date of service 5/6/16 Dr. Dumesh opines:

The above claimant has sustained sprain/strain injuries to the spine and extremities in the above motor vehicle accident. The standard of care for similar injuries would be physical therapy and rehabilitation treatments for a period of three to four months, possibly supplemented by NSAID medications and muscle relaxers. A medication would be necessary if it potentially enhances the treatment and speeds up the resolution of injuries.

In regards to the above Compound Cream, Naproxen, Baclofen and Acetaminophen/ Codeine, the following should be noted. Compound medication is not among the first line of therapy for acute musculoskeletal injuries. Anti-inflammatory medications or Acetaminophen, possibly supplemented by a muscle relaxer, would be more appropriate choices in similar circumstances. As per the article: "Lumbosacral Spine Sprain/Strain Injuries" by Andrea Radebold, MD, published on e-medicine.medscape.com and updated on 10/08/2012: "The goal of pharmacotherapy is to reduce patient morbidity and prevent complications. In acute injuries, pharmacotherapy should usually not exceed 6 weeks of treatment... In the acute phase, muscle relaxants (D,f injection or tablets) help to treat muscle spasms and facilitate light physical therapy. However, muscle relaxants have not been shown to shorten or alter the course of the injury process... NSAIDs are generally used to treat muscle pain in the acute and maintenance phases of treatment. These drugs usually have anti-inflammatory, analgesic, and antipyretic activities. The ability of NSAIDs to inhibit prostaglandin synthesis may be

involved in the anti-inflammatory effect; these agents are indicated in the acute and maintenance phase of the pain treatment for lumbosacral injuries." Further, according to the Workers' Compensation Board Mid and Low Back Injury Medical Treatment Guidelines, Second Edition Effective March 1, 2013, under the rubric D . 7. f. Other Creams and Ointments, it is stated: "May be used for treatment of acute, subacute, or chronic back pain. However, there is no evidence of efficacy." In this case, the claimant was involved in the motor vehicle accident and had been started on multi-modality physical therapy regimen, as well as acupuncture and chiropractic therapy. In addition, the claimant was prescribed muscle relaxer (Cyclobenzaprine) and pain killer (Acetaminophen/Codeine). The above treatment course should have been sufficient for managing the claimant's musculo-skeletal injuries. There was no discussion as to how the use of topical analgesic would help to resolve the claimant's injuries more efficiently than the standard conservative therapy regimen described above. There was no indication that the claimant was unable to tolerate oral forms of analgesics/anti-inflammatory medications and needed to switch to topical formulary to continue pharmaceutical therapy regimen. The addition of a Topical Analgesic and Anti-Inflammatory Compound Cream would not have shortened the duration of in-office therapy, improve prognosis, or otherwise benefited the claimant in this case. Therefore, the above Compound Cream was not medically necessary. However, Naproxen, Baclofen and Acetaminophen/Codeine were medically necessary in this case.

Applicant argues that the opinions set forth in the peer reports are not sufficiently supported by medical literature, making a "Nir" like argument. However, as I have found in prior awards, I am not persuaded that Nir is controlling or even persuasive on the issue of what is required of Respondent to meet its burden. Nir is fundamentally flawed in that it incorrectly holds Respondent to both the burden of production and persuasion. As was previously stated in this award, the Appellate Term has established that Respondent bears the burden of production in support of its lack of medical necessity defense and the ultimate burden of persuasion rests with the Applicant. See, Bronx Expert, supra. Nir is based on the incorrect assertion that Respondent bears both the burden of production and persuasion and as such I do not agree with its specific requirements regarding what is needed for Respondent to meet its burden. A citation to medical literature may bolster a peer or IME report but it is not required. I find that Respondent demonstrates a medical rationale and factual basis to support its defense that the services rendered were not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See, Bronx Expert, supra.

Applicant relies upon the Rebuttal Report by Dr. Drora Hirsch, M.D., dated 2/3/21, in which Dr. Hirsch opines:

... Dr. Isandr Dumesh denied the medical necessity of the compound cream based on the conclusion in the peer reports, dated 3/31/2016 and 6/3/2016.

Medical Necessity: Considering this patient's painful condition, it is very clear that the patient was extremely affected due the accident and remained symptomatic on the evaluation, dated 1/18/2016. He was thus in need for the multiple medications. Mr. Graham presented with complaints of pain in the neck, mid back, right arm, lower back and right knee along with paresthesia, numbness, tenderness, nerve root compression, diminished muscle strength, limited range of motion of the spine and joints. The patient was in distress due to pain and discomfort. The topical pain cream was prescribed for temporary relief from pain and to increase the effectiveness of the conservative care along with the oral medication.

The compounding pharmacy has revolutionized the topical control of pain with the provision of effective synergistic analgesia. In these circumstances, tailor made combinations of pain-killing medications are presented in unique dosage forms such as: creams, gels, ointments, oral lozenges, delayed release formulations, emulsions or suspensions. This practice permits the use of carefully individualized topical preparations that have advantages over standard oral or parenteral forms of analgesic drugs. Topical preparations can replace standard analgesic drug administration, assist in optimal pain control and improve patient compliance. (THE TOPICAL PAIN RELIEF REVOLUTION: PRINCIPLES AND PRACTICE OF COMPOUNDING PHARMACY, STEPHEN HOLT, MD, PhD, DSC, LLD, DISTINGUISHED PROFESSOR OF MEDICINE (Emeritus), UZOMA NWOSU, MD, SCIENTIFIC OFFICER, NUMEDCARE, LLC, BOCA RATON, FL; CLIFFORD B. CARROLL, SCIENTIFIC OFFICER, NUMEDCARE, LLC, BOCA RATON, FL. (www.numedcare.com•, Published by the HOLT INSTITUTE OF MEDICINE, Little Falls, NJ 07424. www.hiom.org))

Dr. Dumesh cites to Workers' Compensation Board Mid and Low Back Injury Medical Treatment Guidelines which stated that "may be used for the treatment of acute, subacute or chronic back pain; however, there is no evidence of efficacy." However, there is increasing

evidence that supports the efficacy of the topical preparations for the relief of nociceptive or neuropathic pain. (J Pain Res. 2011; 4: 11-24) Topical non-steroidal anti-inflammatory drugs (NSAIDs) penetrate the skin, enter tissues or joints, and reduce processes causing pain in the tissue. Drug levels in the blood with topical NSAIDs are very much lower than with the same drug taken by mouth. This minimizes the risk of harmful effects.

Of note, the peer reviewer cites to the New York State Worker's Compensation Board Medical Treatment Guidelines which are not a peer-reviewed authority and refer to Worker Compensation claims as compared to No-Fault claims. These aforementioned guidelines should not be considered as authority to support the denial of the services at issue.

Pain management is mostly done with medicine. Pain medicine works best when it is used regularly and on a schedule. It should not be held back until the pain gets severe. The plan for pain care may include more than one type of pain medicine. They can be given in many ways, like in a pill, IV drip, oral liquid, gel or patch. Medicine often provides a high level of relief. Pain management is the careful use of treatments to reduce pain, Every person has a right to have relief from pain. The main goal of pain management is to improve quality of life. Pain management help improve a person's physical and mental functions. Pain causes distress and suffering for patients; managing the pain helps ease suffering; thus the medications (compound cream) was prescribed to alleviate the pain.

Dr. Dumesh stated that there was no discussion as to how the use of topical analgesic would help to resolve the claimant's injuries more efficiently than the standard conservative treatment regimen described above. It seems that Dr. Dumesh did not thoroughly review the medical records of this patient. In the instant case, Dr. Jacobi indeed prescribed the compound cream along with the standard conservative treatment as well as oral medications. Despite being on the conservative treatment, this patient presented with persistent complaints of pain; therefore, the compound cream was prescribed along with the conservative care to enhance the effectiveness of physical therapy. Patients with moderate-to-severe musculoskeletal pain may experience suboptimal relief despite the use of a non-steroidal anti-inflammatory drug

(NSAID). Patients seeking additional pain relief may inquire about the use of topical NSAID therapy in addition to oral NSAID therapy. (<http://www.medscape.com/viewarticle/861740>, Jenny Van Amburgh, PharmD).

The patient cannot take oral medicines any time within 8 hours, however, the topical medications can be used at any time when required. As discussed above, this patient was having pain at the multiple body parts. In such cases, there are instances when patient gets sudden and severe episodes of pain at a particular injured area which requires immediate medical treatment. At such time, topical preparation plays an important role in providing symptomatic pain relief at the targeted body parts.

Post-traumatic pain frequently is caused by more than one pain generator. Additionally pain may be both musculoskeletal and neurogenic in origin at the same time and treating just one will not alleviate the patient's symptoms satisfactorily. Often even the patient may not be able to discern what exactly is causing the pain they are in. As a result, compound medication is effective at targeting multiple causes of pain at the same time and in my professional experience has been effective since the component medications target various pain generators and also do so in different ways thereby increasing efficacy.

The compound cream contains the following ingredients described below is how they work, why they are beneficial in reducing the patient's paresthesia, numbness, tenderness, nerve root compression, diminished muscle strength, limited range of motion and radiating pain:

Ketoprofen is effective and well tolerated, through different administration routes, for the treatment of various forms of rheumatic, traumatic and post-surgical pain, and may, therefore, be considered as a valid therapeutic option for these patients. (Reumatismo. 2010 Jul Pain and ketoprofen: what is its role in clinical practice?; Sarzi-Puttini P, Atzeni F, Lanata L, Bagnasco M, Colombo M, Fischer F, D'Imporzano M.)

Ibuprofen is a medicine called a non-steroidal anti-inflammatory drug. It is often referred to simply as 'an anti-inflammatory', or sometimes as an 'NSAID. It works by preventing the production of some natural chemicals in your body which cause pain and inflammation.

Gabapentin relieves the pain of PHN by changing the way the body senses pain. It is not known exactly how gabapentin works to treat restless legs syndrome. (U.S. National Library of Medicine; MedlinePlus; See topic Baclofen; URL of this page: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a694007.html>). The peripheral administration of gabapentin has been reported to produce analgesia by a local action in the formalin test (Carlton and Zhou, 1998). The actions of gabapentin on GABAB receptors (Bertrand et al., 2001) and on glutamate release (Maneuf et al., 2001) potentially may contribute to local effects.

Cyclobenzaprine, a muscle relaxant, is used with rest, physical therapy, and other measures to relax muscles and relieve pain and discomfort caused by strains, sprains, and other muscle injuries. (U.S. National Library of Medicine; MedlinePlus; See topic Cyclobenzaprine (<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682514.html>))

Topical Lidocaine has provided effective peripheral analgesia for localized pain associated with joint and low back ailments. Also, clinicians should become familiar with over-the-counter topical preparations for analgesia, as they are often used and can contain ingredients with analgesic mechanisms supported by evidence in the literature. (Topical Agents for the Management of Musculoskeletal Pain; Steven P. Stanos, DO; Journal of Pain and Symptom Management Vol. 33 No. 3 March 2007, pages 342-355)

Baclofen acts on the spinal cord nerves and decreases the number and severity of muscle spasms caused by multiple sclerosis or spinal cord diseases. It also relieves pain and improves muscle movement. It is primarily used for the treatment of spastic movement disorders, especially in instances of spinal cord injury, cerebral palsy, and multiple sclerosis. It is also used by compounding pharmacies in topical pain creams as a muscle relaxant. ("Baclofen". The American Society of Health-System Pharmacists Retrieved 2011-12-06

Flurbiprofen is used to relieve pain, tenderness, swelling, and stiffness caused by osteoarthritis (arthritis caused by a breakdown of the lining of the joints) and rheumatoid arthritis (arthritis caused by swelling of the lining of the joints). Flurbiprofen is in a class of medications called NSAIDs. It works by stopping the body's production of a substance that causes pain, fever, and inflammation. (U.S.

National Library of Medicine; MedlinePlus; See topic Flurbiprofen; URL of this page: <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a687005.html>)

Dr. Dumesh stated that there was no indication that the claimant was unable to tolerate oral forms of analgesic/anti-inflammatory medications and needed to switch to topical formulary to continue the pharmaceutical therapy regimen. I would highlight that patient's inability to tolerate oral forms of analgesic/anti-inflammatory medications are not the only indicator for prescribing the topical formulation. In this case, the patient was indeed prescribed oral as well as topical medications for the treatment of his posttraumatic injuries. Considering the patient's painful condition, the treating physician determined that the patient would need a course of multiple medications including Gabapentin (for nerve pain), Baclofen and Cyclobenzaprine (Muscle relaxant), Flurbiprofen, Ketoprofen and Ibuprofen (NSAIDs) and Lidocaine (anesthetic for pain relief). Oral prescription of all these medicines together would create an apprehension of the drug-to-drug interaction and its side effects. Some of the interactions include, "using cyclobenzaprine together with gabapentin and Baclofen may increase side effects such as dizziness, drowsiness, confusion, and difficulty concentrating. " (Link source: <https://www.drugs.com/drug-interactions/flexeril-with-neurontin-758-386->). Also, the anesthetic lidocaine cannot be administered orally. Therefore, in my opinion, it was appropriate to prescribe the compound cream instead of prescribing these medications in the oral form.

Mr. Graham suffered from persistent complaints of pain and was placed on a variety of medications to help address the symptoms associated with his condition. For his case, multiple medications were combined into a single dose of a specially prepared compound that combines the medications into a topical preparation providing greater convenience for the patient. Topical non-steroidal anti-inflammatory drugs are effective in relieving pain in acute and chronic conditions. Every prescription for compounded preparation is mixed specifically for each patient, based on their condition. The ingredients and components that make up every formulation are specifically selected for their synergistic qualities and a collaborative effect on certain pain modalities. Compounded prescription formulas can combine several

medications into one easy-to-use cream. Compounded formulas can be personalized to adapt to the patient's needs.

Also, the compound cream is indeed a better option than oral medication for the treatment of post-traumatic painful conditions. First-line pain treatment options are typically oral pain medications; however, concerns regarding side effects, prescription drug abuse, the risk of overdose, patient non-adherence to treatment regimens, and lack of efficacy in certain conditions provide a number of challenges for both healthcare providers and patients. A systematic review of topical NSAIDs for acute musculoskeletal conditions (such as strains and overuse-type injuries) studied 3455 subjects and concluded that the preparations can provide good levels of pain relief, without the systemic adverse events associated with oral NSAIDs. (Topical NSAIDs for chronic musculoskeletal pain: systematic review and meta-analysis; Lorna Mason, R Andrew Moore, Jayne E Edwards, Sheena Derry, and Henry J McQuay)

Finally, every choice to take a medicine involves thinking through the helpful effects as well as the possible unwanted effects. A topical pain cream obviously will be less likely to cause long-term problems when it is used for a chronic period of time to treat pain. Topical medications usually are not metabolized by the liver or kidneys, ultimately decreasing the risk of kidney and liver problems with long-term use. The use of multiple drugs, even in fairly straightforward illnesses, is not an indicator of poor treatment and is not necessarily overmedication.

Conclusion:

Based on the foregoing, the patient was in need of the Compound Cream provided by Wellmart, Rx, Inc., on 2/3/2016 and 5/6/2016, for the treatment of his injuries and that it was medically necessary for the reasons laid out in the rebuttal. In prescribing the compound cream, the treating physician has not deviated from any standard of medical care and is within the scope of accepted medical practice.

I find the rebuttal report more persuasive than the peer reports; I find that it meaningfully rebuts the opinion by Dr. Dumesh and by a preponderance of the evidence has established the medical necessity of the compound creams. Accordingly, Applicant is awarded reimbursement of the charges for the compound creams.

Fee Schedule

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip Op 26240, 12 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that an Applicant's claims were in excess of the appropriate fee schedule, Respondent's defense of noncompliance with the appropriate fee schedule cannot be sustained. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dep't, per curiam, 2006).

Respondent fails to submit any competent evidentiary proof to support a fee schedule defenses. Accordingly, Applicant is awarded the claims in the disputed amount of \$2486.60.

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
	Wellmart Rx, Inc.	02/03/16 - 02/03/16	\$925.25	Awarded: \$925.25
	Wellmart Rx, Inc.	05/06/16 - 05/06/16	\$1,561.35	Awarded: \$1,561.35

Total	\$2,486.60	Awarded: \$2,486.60
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- B. The insurer shall also compute and pay the applicant interest set forth below. 09/09/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

In the instant matter Applicant is awarded interest pursuant to the no-fault regulations. 11 NYCRR 65-3.9 (a) provides that Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." Pursuant to 11 NYCRR 65-3.9 (c), "if 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 Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." Applicant electronically submitted its claim for arbitration on 9/9/20, more than thirty days after receipt of the denial of claim. Therefore, interest shall run effective 9/9/20.

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum of the awarded claim plus interest, subject to a maximum of \$1,360.00.

- 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 Nassau

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

02/22/2021
(Dated)

Kevin R. Glynn

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:
b661b7dba42d0fb5bb5c7c5ce08b07a4

Electronically Signed

Your name: Kevin R. Glynn
Signed on: 02/22/2021