American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Princemed Inc (Applicant)	AAA Case No.	17-19-1147-8169
	Applicant's File No.	N/A
- and -	Insurer's Claim File No.	0520575077 2QR
Allstate Insurance Company (Respondent)	NAIC No.	19232

ARBITRATION AWARD

I, Gary Peters, 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 02/05/2021
   Declared closed by the arbitrator on 02/05/2021

   Melissa Zelli from Zelli & Cahill, P.C. participated in person for the Applicant

   John PAlitianos from Law Offices Of Karen L. Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 3,500.00**, 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

   The Assignor was a 28 year old female who was a restrained operator of a motor vehicle involved in an accident on 10/13/18. Reportedly the vehicle was rear-ended and the airbags did not deploy. There was no loss of consciousness.

   Following the accident the Assignor came under the care of various medical providers and sustained multiple bodily injuries. Applicant is seeking reimbursement for medical supplies provided post-left shoulder arthroscopic surgery.

4. Findings, Conclusions, and Basis Therefor

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 record of the hearing and I have reviewed the documents contained therein. Any documents submitted after the hearing or at the hearing that have not been entered in the Electronic Case Folder as of the date of this award, will be listed immediately below this language and forwarded to the American Arbitration Association at the time this award is issued for inclusion.

As stated above, the Assignor was a 28 year old female who was involved in a motor vehicle accident on 10/13/18. She came under the care of various medical providers wherein she received physical therapy, and chiropractic services. She sustained multiple bodily injuries to her cervical/lumbar spine, left shoulder and left knee.

The Assignor consulted with Dr. David Weissberg on 10/26/18 and presented with complaints of left shoulder pain rated as a 7/10. Additionally, she had complaints of paresthesia on the left shoulder wherein the pain worsened with reaching and lifting. Examination of the left shoulder revealed tenderness and crepitus. Range of motion was limited and painful. The following objective testing was positive: Apprehension sign, lift-off, O'Brien, Hawkins and impingements. The diagnosis was left shoulder RC strain. M.R.I. studies of the left shoulder were recommended.

Additionally, as per the initial evaluation report of Aman Deep, PA, dated 11/5/18, the Assignor presented with left shoulder pain rated as a 9/10. The pain reportedly radiated down to the left arm and hands. Outside activities of daily living were effected. Examination of the shoulder revealed tenderness of the glenohumeral joint, acromioclavicular joint and the superior border of the scapula. Impingement, Neer and abduction were positive. The claimant was recommended to continue with physical therapy for 6-8 weeks; 2-3 times per week.

M.R.I. studies of the left shoulder were performed on 11/11/18 and revealed the following: fluid accumulate in the subacromial bursa, obscuring of the adjacent peritendinous fat with peritendinous adjacent to the anterior lateral attachment of the supraspinatus on the humerus, synovial fluid accumulating from the subscapularis recess of the glenohumeral joint and low lying position of the anterior acromion that abuts the underlying supraspinatus.

On 11/12/18 the Assignor underwent a left glenohumeral joint injection under local anesthesia.

There were multiple follow-up reports dated 12/16/18, 12/14/18 and 1/11/19 by Dr. Weissberg. Additional injection to the left shoulder for pain management was provided on 11/16/18. As per the follow-up report dated 1/11/19, the Assignor had persistent pains in the left shoulder despite 10 weeks of physical therapy. Examination revealed tenderness over the greater tuberosity with restricted range of motion. The following testing was positive: Apprehension, O'Brien, crepitus, Hawkins and impingement. The diagnosis was left shoulder rotator cuff strain, left shoulder impingement and bursitis. The Assignor underwent 9 sessions of physical therapy from 11/21/18 to 1/24/19.

As per a follow-up report of Dr. Weissberg date 1/15/19, the Assignor continued to have pain and discomfort. Recommendations were made for left shoulder arthroscopy with possible rotator cuff repair.

As per the operative report dated 1/18/19, the Assignor underwent examination of the left shoulder under general anesthesia, arthroscopy of the left shoulder, arthroscopic synovectomy, arthroscopic posterior labral debridement.

Recommendations were made for durable medical equipment including a non-segmental pneumatic appliance for use with pneumatic compressor, half arm under the DME set-up.

Once an Applicant establishes a prima facie showing, the burden shifts to the Respondent. Respondent's denial for lack of medical necessity must be supported by competent medical evidence setting for a clear and factual basis and medical rationale for denying the claim. Citywide Social Work v. Travelers Indemnity Company, 3 Misc.3d 608 (Civil Court, Kings County, 2004).

To successfully support its denial, the Respondent's Peer Review or I.M.E. Report must address all pertinent objective findings contained in the Applicant's medical submissions and set forth how and why the disputed services were inconsistent with generally accepted medical practices. The conclusory opinions of a peer reviewer, standing alone and without support of medical authorities, will not be considered sufficient to establish the absence of medical necessity (Citywide Social Work v. Travelers Indemnity Company,) Supra; Amaze Medical Supply Inc. v. Eagle Insurance Company, 2 Misc.3d 128A, 784 N.Y.S.2d 918 (App. Term 2d 11th Judicial District).

Where Respondent meets its burden, it is incumbent upon the claimant to rebut the findings and recommendations of the Respondent's reports. The insured/provider

bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, plaintiff must rebut it or succumb (Bedford Park Medical Practice, P.C. v. American Transit Insurance Company, 8 Misc.3d 1025A).

It is undisputed that the Applicant has established a prima facie case of entitlement to first party benefits by demonstrating it submitted a timely claim setting forth the fact, amount of loss sustained and that payment of the claim has not been made. As stated above, the burden shifts to the Respondent to set forth a clear and factual basis in medical rationale to deny the claim.

On behalf of the Respondent, Dr. Stuart Springer reviewed multiple medical records and stated that in his opinion, the operative procedure and medical supplies were not necessary. He referenced the following: Shoulder Arthroscopy, Chapter 16, Arthroscopic Subacromial Decompression by James Tasto, wherein it is stated that "A trial of non-operative care is absolutely necessary before surgical intervention is considered. The majority of the patients with impingement syndrome can be managed conservatively and well over 2/3 of the patients should have a satisfactory result if there is no rotator cuff tear present. The non-operative program should consist of a form of physical therapy or a home program including non-steroidal anti-inflammatory medication. Lastly, surgical intervention should not be entertained before a minimum of 6 months of conservative treatment. Additionally, reference was made to an article "Frozen Shoulder" by Dr. Kuper, M.D. wherein it is stated that adhesive capsulitis or frozen shoulder is a condition that involves the gradual onset of pain and stiffness in the shoulder which can be resistant to treatment such as rest and anti-inflammatories. The general response to aggressive physical therapy modalities and the use of oral and/or injectable cortico-steroids.

Lastly, with respect to the medical supply, Respondent's expert referenced NCBI PMC - Primary Prevention of Venous Thromboembolism in Elderly Patients wherein it is stated that before prescribing and anti-coagulant regimen, they need to check systematically the potential contraindications: based on bleeding, platelet counts and renal function in the event there was a contra indication for pharmacological and utilization. The apparatus should be considered as an alternative method when contraindications such as the above exists.

For the reasons as stated above, recommendations were made against payment.

Dr. Drora Hirsh reviewed medical records and submitted a Peer Review Rebuttal. She disagreed with Dr. Springer's conclusions that left shoulder surgery was not medically necessary as the M.R.I. report did not reveal a labral tear since in this case

there was sufficient findings on examination itself to warrant the left shoulder surgery. Additionally, for the reasons stated in the 1/15/19 examination, there were multiple positive objective findings. Additionally, in her opinion, the Assignor was treated with adequate sessions of conservative care in the form of physical therapy and acupuncture treatment along with pain medication for at least 3-6 months before heading with the surgical intervention. She also opined it is common knowledge that when a patient is unresponsive to conservative treatment, the only measure to control pain is surgery. Importantly, the Assignor was recommended for surgery due to failed conservative treatment including physical therapy, Kenalog injection and a pharmaceutical intervention.

Dr. Hirsh further stated that she disagrees with Dr. Springer's conclusion that the pneumatic compression device was not necessary. She believed that deference should be given to the treating physician to decide based on the circumstances of the injury and the patient's examination findings whether the prescription of medical equipment is appropriate.

She stated the pneumatic compression device is a vaso pneumatic compressor with cryotherapy which consists of various soft wraps and computer-controlled unit. The wraps fit snuggly to apply intermittent compression and cryotherapy at the injured area. The device can be utilized to reduce pain and swelling, increase healing as tissues can decrease need for all pain medication, increase range of motion and decrease rehabilitation time. Reference was made to medical authority including devices used in the home setting.

Additionally, she stated it is well-documented that the pneumatic compressor serves as an effective device to be used during immediate post-surgery hospital stay. The Guidelines also suggest using the device as during the hospital stay in addition to pharmacological prophylaxis. Similarly, devices that incorporate cold intermittent compression in a controlled fashion will likely be the best option post-operatively.

Additionally, the pneumatic compressor was medically necessary in accordance with medical literature as the patient had an increased risk of DVT due to recent surgery causing immobility as well as other risk factors.

Lastly, a pneumatic compressor has been shown to be effective for musculoskeletal injuries "with evidence that the device can enhance both fracture and soft-tissue healing with functional recovery, the use of such modalities in musculoskeletal trauma should be considered. (Dept. of Trauma In Orthopedic Surgery, Keele University School of Medicine, UK).

After reviewing all the evidence, I give deference to the treating physician. I find that both Dr. Weissberg and Dr. Hirsch established that the surgical intervention was necessary as well as the medical supplies for the reasons as stated above. Therein, the Assignor had aggressive physical therapy including pain management with injections and medication. Additionally, the evidence supported that the pneumatic compressor serves as an effective device to be used during immediate post-surgery hospital stay. The Guidelines also suggest using the device as during the hospital stay in addition to pharmacological prophylaxis. Similarly, devices that incorporate cold intermittent compression in a controlled fashion will likely be the best option post-operatively.

For the reasons as stated above, Applicant is awarded reimbursement in the sum of $3,500.00.

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**
	Princemed Inc	**01/29/19 - 01/29/19**	**$3,500.00**	**Awarded: $3,500.00**

Total	**$3,500.00**	**Awarded: $3,500.00**

B. The insurer shall also compute and pay the applicant interest set forth below. 11/10/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest to be 2% per month simple, not compounded on a pro rata basis using a 30 day month. Respondent shall compute and pay Applicant interest from the day of filing of arbitration to 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 pay th Applicant an attorney fee in accordance with 11 NYCRR 65-4.6(d) or "As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated bt the Departmenet of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the the Applicant an attorny fee in accordance with the newly promulgated 11 NYCRR 65-4.6(d). This amendment takes into acccount that the the maximim attorney fee has been raised from $850.00 to $1360.00

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

03/06/2021
(Dated)

Gary Peters

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:
8913508b15d0af5dc183849f0a035b4b

Electronically Signed

Your name: Gary Peters
Signed on: 03/06/2021