American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

FJ Orthopaedics & Pain Management PLLC (Applicant)	AAA Case No.	17-19-1139-5963
	Applicant's File No.	00045199
- and -	Insurer's Claim File No.	0377713760003
	NAIC No.	36447
LM General Insurance Company (Respondent)		

ARBITRATION AWARD

I, Wendy Bishop, 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 (J.A.)

1. Hearing(s) held on 05/20/2021, 05/25/2021
   Declared closed by the arbitrator on 05/20/2021

   Rachel Drachman, Esq. from Drachman Katz, LLP participated in person for the Applicant

   Alan Zysberg, Claims Rep. from LM General Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 3,654.66**, 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 is a 62-year-old male who was involved in a motor vehicle accident on July 3, 2018. Following the accident, the Assignor complained of pain to his neck, left arm, left elbow, and back. The Assignor underwent a course of treatment that included physical therapy. On dates of service between May 15,2019 and June 11, 2019, the Assignor underwent office visits and cervical epidural steroid injection. Respondent denied the portion of the claim for the office visits performed on May 15, 2019, May 23, 2019, and June 11, 2019 based on the results of an independent medical examination (IME) conducted by Respondent's consultant, Dana Mannor, M.D. on December 12, 2018 with a treatment cutoff date of January 10, 2019. Respondent denied the portion of the claim for the epidural steroid injection to the Assignor's cervical spine performed on

June 2, 2019 based on a peer review performed by Mitchell Ehrlich, M.D. on July 11, 2019. Respondent also raises a defense based on the Worker's Compensation fee schedule regarding the epidural steroid injection.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in the ADR CENTER. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in the ADR CENTER maintained by the American Arbitration Association.

It is now well settled that Applicant establishes "a prima facieshowing of their entitlement to judgment as matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue."Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 In the case at bar, Applicant has met this burden.

IME - DOS May 15, 2019, May 23, 2019 and June 11, 2019

Respondent submits the report of the IME performed by Dana Mannor, M.D. on December 12,2018in support of its contention that no further treatment was medically necessary. Range of motion testing and clinical orthopedic and neurological tests were negative and unremarkable. Dr. Mannor concluded that the Assignor's injuries had resolved, and that no further treatment was necessary. Dr. Mannor's IME report adequately supports her conclusions. Respondent has thus satisfied its initial burden in support of its defense of lack of medical necessity.

Therefore, the burden shifts to Applicant to demonstrate the medical necessity of further treatment. Applicant submits the rebuttal report of the Assignor's treating doctor, Jacob Peacock, M.D. dated April 8, 2021. Dr. Peacock points to the clinical examination of the Assignor conducted by Vaijinath Chakote, M.D. on December 13, 2018, just one day after Dr. Mannor's IME. Dr. Chakote found limitations in all planes in the range of motion of the Assignor's cervical spine, lumbar spine, left elbow, and left shoulder. Straight leg raise test was positive. Dr. Peacock also points to the clinical examination of the Assignor conducted by Dr. Chakote on October 16, 2018, which also found limitations in all planes in the range of motion of the Assignor's cervical spine, lumbar spine, left elbow, and left shoulder. Straight leg raise test was positive. Dr. Peacock asserts that the Assignor's injuries had not resolved, and that further treatment was medically necessary. Applicant has thus effectively rebutted Dr. Mannor's IME report, and demonstrated the medical necessity of further treatment.Therefore, Applicant's claim for the office visits at issue is granted.

Peer - DOS June 2, 2019

Respondent submits the peer review report of Michell Ehrlich, M.D. dated July 11,2019 in support of its contention that the epidural steroid injection to the Assignor's cervical spine performed on June 2,2019 was not medically necessary. Dr.Ehrlich discusses the Assignor's course of treatment. Dr. Ehrlich discusses clinical examinations of the Assignor performed in May 2019. Dr. Ehrlich asserts that the epidural steroid injection to the cervical spine was not indicated because the clinical examinations did not reveal significant radiculopathies in the Assignor's upper extremities. Dr. Ehrlich also asserts that the MRI of the Assignor's cervical spine did not reveal correlative disc

pathology indicating the need for an epidural steroid injection to the Assignor's cervical spine. However, Dr. Ehrlich fails to cite medical authorities that support his asserted standard of care. Dr. Ehrlich's peer review report thus does not adequately support his conclusion that the cervical epidural steroid injection was not medically necessary. Respondent thus has not satisfied its initial burden in support of its defense of lack of medical necessity.

Fee

Respondent also contends that Applicant billedin excess ofthe Worker's Compensation fee schedule for the cervical epidural steroid injection. Respondent submits the fee audit of Beth Palisin, RN, BSN, CPC dated October 21, 2019. Applicant billed the amount of $3,271.64. Coder Palisin explains that Applicant billed for the injection under CPT Code 62321, but that this code is not included in the Worker's Compensation fee schedule, and that therefore reimbursement in accordance with the CPT Code included in the fee schedule that is used for the relevant service, i.e., cervical epidural steroid injection. Coder Palisin explains that CPT Code 62310 is the applicant code pursuant to the fee schedule, and that reimbursement in the amount of $343.56 as calculated pursuant to the fee schedule is proper rather than the amount of $1,901.05 billed by Applicant. Coder Palisin's fee audit is supported by the fee schedule in this respect. Coder Palisin further explains that billed CPT Code 77003 is included within billed CPT Code 72275 pursuant to the fee schedule, and therefore is not separately reimbursable pursuant to the fee schedule. Coder Palisin's fee audit is supported by the fee schedule in this respect. As to the aspects of Coder Palisin's fee audit that I find persuasive, Applicant has failed to rebut Coder Palisin's fee audit.

Coder Palisin further asserts that supply CPT Code 99070, for which Applicant billed five units, is not reimbursable because Applicant failed to provide Respondent with an invoice for the billed materials demonstrating the cost of the materials. However, there is no indication that Respondent ever sought such documentation from Applicant by means of a verification request. Therefore, Coder Palisin's position that Applicant is not entitled to reimbursement for these CPT codes is not adequately supported.

Accordingly, Applicant's claim for the office visits is granted. Applicant's claim for the cervical epidural steroid injection is granted in accordance with Respondent's fee audit, except that the five units billed under CPT Code 99070 are also granted as billed.

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**
	FJ Orthopaedics & Pain Management PLLC	**05/15/19 - 05/15/19**	**$104.08**	**Awarded: $104.98**
	FJ Orthopaedics & Pain Management PLLC	**05/15/19 - 05/15/19**	**$92.98**	**Awarded: $92.98**
	FJ Orthopaedics & Pain Management PLLC	**05/23/19 - 05/23/19**	**$92.98**	**Awarded: $92.98**
	FJ Orthopaedics & Pain Management PLLC	**06/02/19 - 06/02/19**	**$3,271.64**	**Awarded: $1,569.73**
	FJ Orthopaedics & Pain Management PLLC	**06/11/19 - 06/11/19**	**$92.98**	**Awarded: $92.98**
Total			**$3,654.66**	**Awarded: $1,953.65**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/26/2019 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, Wendy Bishop, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

05/25/2021
(Dated)

Wendy Bishop

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:
25f8843df34514bd687f44c917ddbe3b

Electronically Signed

Your name: Wendy Bishop
Signed on: 05/25/2021