American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

G.M. Wellness Medical PC (Applicant)	AAA Case No.	17-19-1137-7647
	Applicant's File No.	DK19-70682
- and -	Insurer's Claim File No.	IAN0077
	NAIC No.	38130
St. Paul Travelers Insurance Co. (Respondent)		

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 04/30/2021
   Declared closed by the arbitrator on 05/06/2021

   Henry Guindi, Esq. from Korsunskiy Legal Group P.C. participated by telephone for the Applicant

   Gina Spiteri, Esq. from Law Offices Of Tina Newsome-Lee f/k/a Aloy O. Ibuzor participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 3,314.62**, 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 claimant was the 32 year-old female restrained driver of a motor vehicle that was involved in an accident on 11/27/18. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is a 2/15/19 neurological evaluation and electrodiagnostic testing conducted by Paul John Hannan, M.D. of Applicant's office. As to the office visit Respondent timely raised a fee schedule defense. As to the electrodiagnostic testing Respondent denied reimbursement based on a 5/6/19 peer review by Uriel Davis, D.O.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and 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. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

The claimant was the 32 year-old female restrained driver of a motor vehicle that was involved in an accident on 11/27/18. The claimant reportedly injured her neck, right shoulder, mid back, and lower back. There was no reported loss of consciousness. There were no reported lacerations or fractures. There was no reported emergency treatment sought or received. On 11/28/18 the claimant presented to Hong Pak, M.D. of Metro Pain Specialists, P.C. ("Metro") with complaints of headaches, neck pain radiating to the right upper extremity, right shoulder pain, mid back pain, and low back pain radiating to the bilateral lower extremities. Pain was rated 7-9/10. Right shoulder examination revealed restricted range of motion in all planes (quantified) and positive for crepitus and impingement. Cervical examination revealed restricted range of motion in all planes (quantified) and Spurling's test positive bilaterally. Lumbosacral examination revealed restricted range of motion in all planes (quantified) and SLR was positive at 45° bilaterally. The claimant was recommended for physical therapy, pain consultation, neurologic consultation, orthopedic consultation, chiropractic consultation, acupuncture consultation, and MRIs (head, right shoulder, cervical spine, and lumbar spine). Dr. Pak prescribed Flexeril, Ibuprofen 800, Diclofenac 3% gel, and durable medical equipment (DME) consisting of infrared heating lamp, LSO, EMS unit with placement belt, bedboard, foam rubber mattress, cervical pillow, orthopedic car seat support and cervical collar. Contemporaneously or subsequently the claimant was initiated on physical therapy, chiropractic treatment, acupuncture, and cupping. On 1/9/19 Elton Williams, M.D. of Metro conducted a follow-up examination that was substantially similar to that of 11/28/18. Dr. Williams prescribed Flexeril, Lidocaine 5% ointment, and 60 MedX patches. On 1/24/19 Thoden Chiropractic, P.C. prescribed DME consisting of a cervical posture pump and a custom-fitted lumbosacral orthosis with APL control. The 1/24/19 cervical spine MRI interpreted by Barbara Moriarty, M.D. produced an impression of C2-C3 left parasaggital disc herniation effacing the CSF column, C3-C4 central disc herniation effacing the CSF column and contiguous with the cord, C4-C5 central disc herniation effacing the CSF column and contiguous with the cord, C5-C6 central disc herniation effacing the CSF column and abutting the ventral surface of the cord, and low-lying cerebellar tonsils without evidence of crowding. The 1/24/19 lumbar spine MRI interpreted by Barbara Moriarty, M.D. produced an impression of at L4-L5 there is a left foraminal disc herniation impressing on the adjacent nerve root and at L5-S1 there

is a small central disc herniation impressing on the thecal sac. On 2/7/19 Life Care Physical Therapy ("Life Care") conducted computerized range of motion and manual muscle testing (ROM/MMT). On 2/14/19 John Greco, M.D. of Metro conducted a follow-up examination. Right shoulder examination revealed no tenderness and normal range of motion. Cervical examination revealed normal range of motion, but with mild pain. Deep tendon reflexes, manual muscle strength, and sensation were normal. Thoracic examination revealed mild muscle spasms and tenderness. Lumbar examination revealed range of motion was: flexion 75/90, extension 20/30, bilateral rotation 30/45, and bilateral lateral flexion was normal (30/30). SLR was not indicated as positive. Deep tendon reflexes, manual muscle strength, and sensation were normal. The claimant was recommended to continue on physical therapy 3 times per week for 4 weeks. On 2/14/19 Metro supervised Outcome Assessment (OSWESTRY) Testing (OAT). On 2/15/19 (on referral from Dr. Pak) Paul John Hannan, M.D. of G.M. Wellness Medical, P.C. (Applicant) conducted a neurological evaluation preliminary to upper extremities and lower extremities EMG/NCV performed the same day that suggested evidence consistent with right C5, C6 nerve root irritation and bilateral L4-L5 lumbosacral radiculopathy. The claimant presented with complaints of neck pain radiating to right shoulder with stiffness, mid back pain and lower back pain radiating to left buttock, thigh and leg. Pain was described as intermittent. The claimant appeared to be in moderate distress due to pain and discomfort. Physical examination revealed reduced ROM of lumbar spine at flexion 70/90, extension 10/25, right lateral bending 15/25 and left lateral bending 15/25 with pain. Similarly, bilateral shoulders at flexion 90/180 and abduction 90-110/180. Tenderness was noted at C2-C7 and L1-L5 with muscle spasm. Motor examination of upper extremities was reduced at right-left shoulder abduction 3/5, right elbow flexion 3.5/5, left flexion 3. 5/5 and left-right elbow extension 4/5. Also motor examination of lower examination was reduced at right hip flexion 3.5/5, left hip flexion 4/5, right hip extension 3.5/5, left hip extension 4/5, right knee extension 3.5/5, left knee extension 3.5/5, right knee flexion 3.5/5, left knee flexion 3.5/5 and right-left ankle dorsi flexion 4.5-4/5. Sensation for upper and lower extremities was decreased at right trapezius, deltoid, bicep, median nerve distribution, ulnar nerve distribution, gluteai, vastus, tibial anterior nerve distribution, peroneus nerve distribution and gastrocnemius. Maximal cervical compression test found positive. The claimant was recommended for EMG/NCV testing. On 3/18/19, 3/20/19, and 3/25/19 Alex Khait, D.C. (co-surgeon) and Avi Weinberger, D.C. (co-surgeon) performed manipulation under anesthesia. On 3/27/19 the claimant presented to Camari Wallace, M.D. of Metro for an "initial evaluation" with complaints of radiating low back pain rated 6/10 and radiating neck pain rated 8/10. Lumbar examination revealed range of motion was "restricted extension and lateral rotation bilateral, with end range discomfort noted. Palpation: Tenderness on palpation paravertebral over the Right and Left L3-4, L4-5, L5-S1 lumbar facet joints. Sacroiliac joints not tender on palpation bilateral. Tender trigger points felt at the lumbar spinalis, longissimus, iliocostalis, serratus posterior inferior and superior and gluteal muscles…Extension and Lateral Rotation: positive on the right and left side." Dr. Wallace's diagnostic impression was "Right and Left C2-3, C3-4, C4-5, C5-6, C6-7, C7-T1 Cervical Facet Syndrome; Right and Left Cervical Radiculopathy; Right and Left L3-4, L4-5, L5-S1 Lumbar Facet Syndrome; [and] Fibromyositis." Dr. Wallace's treatment plan included "Cervical facet steroid injections of the affected levels; Lumbar facet steroid injections of the affected levels; 1

to 3 cervical interlaminar epidurals steroid injections depending on response to treatment; [and] Trigger point injections at the affected trigger points." On 4/9/19 Metro supervised OAT. On 4/13/19 Metro ordered a comprehensive urinalysis drug screening. On 4/13/19 Dr. Wallace performed bilateral L3, L4, L5 Lumbar Medial Branch Nerve Blocks under fluoroscopic guidance. On 4/27/19 Dr. Wallace performed cervical epidural steroid injections and an Epidurogram. On 5/7/19 the claimant underwent physical capacity (NIOSH) testing (FCE) conducted by Life Care. On 5/21/19 Metro supervised OAT. On 5/23/19 Life Care conducted ROM/MMT. On 6/13/19 the claimant underwent FCE conducted by Life Care. On 6/14/19 Metro ordered a comprehensive urinalysis drug screening. On 6/14/19 Dr. Wallace performed bilateral L3, L4, L5 Lumbar Medial Branch Nerve Blocks under fluoroscopic guidance. At issue is the 2/15/19 neurological evaluation and electrodiagnostic testing conducted by Paul John Hannan, M.D. of Applicant's office.

Office visit

It is well established that a healthcare provider must limit its charges according to the applicable fee schedule. *Goldberg v. Corcoran*, 153 AD2d 113, 117-18 (App Div, 2d Dept 1989). 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).

Applicant billed Respondent $299.26 for the initial comprehensive consultation on 4/29/15 under CPT code 99245. CPT code 99245 is for an office consultation which requires three (3) key components: A comprehensive history; a comprehensive examination; and medical decision making of high complexity. It is stated in the Fee Schedule that the physician typically spends 80 minutes with the patient. Respondent's timely denial states "PER DOCUMENTATION RECEIVED, BEING REIMBURSED AS 99203." CPT code 99203 provides for medical decision making of low complexity. In support of the reduction of the reimbursement of the office visit for 2/15/19 Respondent uploaded the detailed affidavit of Amy C. Kaczmarek, CPC, CEMC who sets forth the components of CPT code 99245. I am persuaded that Ms. Kaczmarek noted the systems reviewed/examined along with the recorded history, diagnoses, plan,

etc. and applied specific criteria. Here, Applicant offers no rebuttal evidence to refute Ms. Kaczmarek's affidavit. Accordingly, Applicant is not entitled to additional reimbursement for the 2/15/19 office visit.

Upper and lower EMG/NCV testing

Respondent's denial indicates the $3,119.44 bill for the 2/15/19 upper and lower EMG/NCV testing was received on 3/30/19, no verification was requested and the bill was denied on 5/8/19 (39 days later) based on a 5/6/19 peer review by Uriel Davis, D.O. Box 28 (date final verification requested) and box 29 (date final verification received) are blank on Respondent's denial and Respondent did not upload copies of any verification requests related to this bill.

"When an insurance company fails to comply with its duty to act expeditiously in processing no-fault claims, it will be precluded from raising most defenses (see, e.g., *Presbyterian Hospital in City of N.Y. v. Maryland Casualty Co.*, 226 A.D.2d 613, 641 N.Y.S.2d 395; *LaHendro v. Travelers Ins. Co.*, 220 A.D.2d 971, 632 N.Y.S.2d 720; *Presbyterian Hosp. in City of N.Y. v. Atlanta Cas. Co.*, 210 A.D.2d 210, 619 N.Y.S.2d 337; *Loudermilk v. Allstate Ins. Co.*, 178 A.D.2d 897, 577 N.Y.S.2d 935; *Bennett v. State Farm Ins. Co.*, 147 A.D.2d 779, 537 N.Y.S.2d 650). This is because the very purpose of the no-fault law was to ensure the "swift reimbursement of accident victims * * * who had serious injuries" (*Pavone v. Aetna Cas. & Sur. Co.*, 91 Misc.2d 658, 663, 398 N.Y.S.2d 630), with "as little litigation as possible" (*Matter of Furstenburg* [*Aetna Cas. & Sur. Co.*], 67 A.D.2d 580, 583, 415 N.Y.S.2d 849, rev'd on other grounds 49 N.Y.2d 757, 426 N.Y.S.2d 465, 403 N.E.2d 170)." *Presbyterian Hospital v. Aetna Casualty & Surety Co.*, 233 A.D.2d 431, 432, 650 N.Y.S.2d 255, 257 (2d Dept. 1996).

As Respondent's medical necessity defense is precluded Applicant is entitled to reimbursement for the 2/15/19 upper and lower EMG/NCV testing. As to the amount of reimbursement I am persuaded by Ms. Kaczmarek's affidavit that it should be limited to $3,045.08. She applied the Region 4 ($8.45) MD conversion factor in calculating this total: 95904 = $106.47 ($8.45 x RVU 12.60) x 10 units = $1,064.70; 95903 = $166.47 ($8.45 x RVU 19.70) x 8 units = $1,331.76; 95864 = $408.64 ($8.45 x RVU 48.36) x 1 unit = $408.64 and 95934 = $119.99 ($8.45 x RVU 14.20) x 2 units = $239.98. Accordingly, Applicant is awarded $3,045.08.

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**
	G.M. Wellness Medical PC	**02/15/19 - 02/15/19**	**$3,314.62**	**Awarded: $3,045.08**
Total			**$3,314.62**	**Awarded: $3,045.08**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/07/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 8/7/19 (the date that arbitration was requested) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of $1,360."

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

05/29/2021
(Dated)

Charles Blattberg

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:
aa89cec9f78c3ec5ae56ea39b8e9ab43

Electronically Signed

Your name: Charles Blattberg
Signed on: 05/29/2021