American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tenssource, LLC (Applicant)	AAA Case No.	17-20-1166-5630
	Applicant's File No.	GM19-69483
- and -	Insurer's Claim File No.	H5G1966
	NAIC No.	38130
St. Paul Travelers Insurance Co. (Respondent)		

ARBITRATION AWARD

I, Ann Lorraine Russo, 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: patient

1. Hearing(s) held on 10/21/2021
   Declared closed by the arbitrator on 10/21/2021

   Helen Cohen, Esq. from Law Offices of Gabriel & Moroff, P.C. participated for the Applicant

   Miriam Granov, Esq. from Law Offices of Tina Newsome-Lee participated for the Respondent

2. The amount claimed in the Arbitration Request, **$ 819.20**, 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 issue in dispute in this case is the nonpayment by respondent for medical equipment provided to the thirty-nine-year-old female patient on 11/1/17 and 11/6/17 by the applicant for a motor vehicle accident on 7/13/17. The respondent issued a timely denial for the medical equipment provided by the applicant to the patient on 11/1/2017 based upon the peer review report by Bonnie Corey, D.C. The respondent did not submit a denial for the medical equipment provided to the patient on 11/6/2017 in this case.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the electronic case folder as of the date of the hearing and oral arguments of counsel for the respective parties. No witness testimony was presented at the hearing.

The issue in dispute in this case is the nonpayment by respondent for medical equipment provided to the thirty-nine-year-old female patient on 11/1/17 and 11/6/17 by the applicant for a motor vehicle accident on 7/13/17. The respondent issued a timely denial for the medical equipment provided by the applicant to the patient on 11/1/2017 based upon the peer review report by Bonnie Corey, D.C. The respondent did not submit a denial for the medical equipment provided to the patient on 11/6/2017 in this case. Respondent provided that the peer review report addresses both dates of service and that the respondent be permitted additional time to submit the denial for the date of service on 11/6/2017. As provided by applicant's attorney the medical necessity defense is a defense that must be timely submitted and supported by respondent and that respondent's request for additional time to submit the denial upon which the respondent's position is based and is the pertinent documentation in this case, would be severely late in this case. Applicant noted that the late request violates the rocket docket rules and procedures of the arbitration forum. Applicant further provided that the late request to submit additional and further documentation, of the respondent's own denial upon which they chose to defend this case and is in the care custody and control of the respondent is prejudicial to the applicant and should be precluded in this case. The request to provide a late submission of the respondent's denial for date of service on 11/6/2017 is prejudicial to the applicant and would reward the respondents' tardy behavior. Consequently, the respondent's late request is denied and this duly scheduled hearing on 10/21/2021 proceeded for a determination. The applicant submitted a rebuttal report by Dr. Arun Agrawal in this case. The amount in dispute is $819.20 for the TENs unit and accessories provided by applicant to the patient in this case.

A review of the competent evidence in the record reveals that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of completed NF-3 forms documenting the facts and amounts of the losses sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11th Jud. Dusts.]) 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." Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Also, in this case, Respondent's own denials demonstrate that it received Applicant's claim forms. Therefore, I find Applicant established a prima facie case. Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. (See Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

However, even before determining whether Respondent met its burden of proof, it must first be determined whether Respondent's defense survives preclusion. In a no-fault action, a defense, other than one based upon a lack of coverage, survives preclusion only

if raised in a denial that is (1) timely, Presbyterian Hosp. in the City of New York v. Maryland Casualty Ins. Co., 226 A.D.2d 613 (2nd Dept. 1996); Central Gen. Hosp. v. Chubb Group of Ins. Co., 90 N.Y.2d 195 (1997), (2) includes the information called for in the prescribed denial of claim form, 11 NYCRR § 65-3.4 (c) (11); Nyack Hosp. v. Metropolitan Prop. & Cas. Ins. Co., 16 A.D.3d 564 (2d Dept. 2005); Nyack Hosp. v. State Farm Mut. Auto. Ins. Co., 2004 WL 2394038, 2004 NY Slip Op 07663 (2d Dept. Oct. 25, 2004); Summit Psychological, P.C. v. General Assur. Co., 9 Misc.3d 8, 801 N.Y.S. 2d. 117, 2005 N.Y. Slip OP. 25263, (App Term 2nd Dept., 2005); Shtarkman v. Allstate Ins. Co., 8 Misc.3d 129(A), 2005 NY Slip Op 51028(U) (App Term 2d & 11th Jud Dists.), or is not fatally defective, and (3) "promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated", General Accident Ins. Group v. Cirucci, 46 N.Y.2d 862, 864, 414 N.Y.S.2d 512, 387 N.E.2d 223 (1979); New York University Hosp. Rusk Ins. v. Hartford Acc. & Indem. Co., 32 A.D.3d 458, 2006 NY Slip Op 06223 (2d Dept. 2006). In the case at hand, the respondent issued a timely denial based upon peer review report challenging the medical necessity of the medical equipment for date of service on 11/1/2017 in dispute. The denial is timely and promptly apprise(s) the claimant with a high degree of specificity of the ground or grounds on which the disclaimers are predicated in this case. As a result, the respondent has timely denied the applicant's claims thereby preserving its defense based upon the medical necessity of the medical equipment provided to the patient on 11/1/2017 in this case.

The peer review report by Bonnie Corey, D.C. is not persuasive pertaining to the medical necessity of the medical equipment provided to the patient in this case. The peer review does not sufficiently incorporate or discuss the pertinent medical information contained in the medical records in support of the recommendations and conclusions provided in the peer review report denying the medical equipment in this case. The peer reviewer noted a list of medical records reviewed in the reports. The peer reviewer possessed several diagnostic and medical records for the patient but does not sufficiently incorporate any of the diagnostic test findings and results or medical events in the medical records and physical examination reports. The peer reviewer's opinions, analysis and conclusions are not consistent. The peer reviewer does not implement or discuss the pertinent medical information contained in the medical records that provide the patient's medical history, mechanism of the motor vehicle accident on 7/13/17 and course of medical treatment for the patient's injuries as a result of the accident and the patient's condition and status. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the applicant's medical records in this case. The peer reviewer does not sufficiently address or incorporate the total and complete findings contained in the medical reports and reports. The medical reports contain sufficient information in response to the concerns provided in the peer review report by Dr. Corey. The peer review report does not provide significant and persuasive analysis and opinions in opposition to the applicant's medical records in this case. The applicant's medical reports contain sufficient information in response to the concerns provided in the peer review report. The peer review report is not persuasive in this case.

The peer review report is not persuasive in this case. The peer reviewer noted an extensive list of medical records in the peer review report and provides scant and limited analysis of the medical documentation. The peer reviewer does not sufficiently discuss

and incorporate the pertinent clinical findings and events in the peer review reports in support of the opinions, recommendations and conclusions that the medical equipment services in this case was not medically necessary. The peer reviewer does not implement the significant clinical events and findings for the specific patient that sustained injuries as a result of a motor vehicle accident on 7/13/17. The medical records are consistent and persuasive and provide the patient's continued subjective complaints and positive objective findings in support of the medical decision to implement and provide the medical equipment. The rebuttal report by Dr. Agrawal is consistent with the medical records and reports for the course of medical treatment for the patient in this case. The medical records provided the patient's injuries sustained in the motor vehicle accident on 7/13/17 and course of medical treatment, including the medical equipment. The medical reports sufficiently incorporate the medical equipment in the patient's course of medical treatment and the way the medical equipment affected the patient's status and recovery. There are medical reports that provide the medical equipment services affected the patient's status and well-being. The peer reviewer does not adequately discuss the specific patient in this case for these specific circumstances. The peer reviewer did not sufficiently apply the medical general principals and standards to the prescription and utilization of the medical equipment in this case. Consequently, the medical equipment provided by applicant for the patient in this case are granted.

Based upon the evidence presented in this case, it is the opinion of this Arbitrator that the applicant has established that the medical equipment was medically necessary and warranted in this case.

Accordingly, the applicant's claim is 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
	Tenssource, LLC	**11/01/17 - 11/01/17**	**$76.25**	**Awarded: $76.25**
	Tenssource, LLC	**11/06/17 - 11/06/17**	**$742.95**	**Awarded: $742.95**
Total			**$819.20**	**Awarded: $819.20**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/28/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The respondent shall pay the applicant interest from the date of the arbitration filing on 5/28/2020.

C. Attorney's Fees

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

The respondent shall pay the applicant attorney fees pursuant to 11 NYCRR Section 65-4.6.

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

10/22/2021
(Dated)

Ann Lorraine Russo

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:
8c939e9ad7c4cce304faceaa7fdeca2e

Electronically Signed

Your name: Ann Lorraine Russo
Signed on: 10/22/2021