American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ready RX LLC (Applicant)	AAA Case No.	17-21-1191-5539
	Applicant's File No.	61825
- and -	Insurer's Claim File No.	1077053-02
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

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 11/23/2021
   Declared closed by the arbitrator on 11/23/2021

   Robin Grunert from Law Offices of Eitan Dagan (Elmhurst) participated in person for the Applicant

   Helen Cohen from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,829.60**, 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 was a 54 year old male who was a restrained rear seat passenger in a motor vehicle involved in an accident on 1/4/20.

   Applicant is seeking payment for pharmaceuticals wherein the claim was denied for lack of medical necessitybased on its Independent Peer Review Report. A portion of the claim was also denied wherein the Respondent asserted lack of coverage as it established the "fact of how it believed" that the injuries were not causally relatedto the motor vehicle accident.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using the Electronic Case Folder maintained by the American ArbitratioAssociation. All documents contained in that folder are made part of the record of the hearing and I havereviewed the documents contained therein. Any documents submitted after the hearing or at the hearing thathave 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 forinclusion.

As stated above, the Assignor was involved in a motor vehicle accident on 1/4/20 and sustained multiple injuries to his neck, low back and right shoulder. He presented to Dr. Scoly for an initial evaluation of his injuries on 1/7/20 and complained of neck pain radiating to the bilateral shoulders and down the right shoulder; pain was rated as an 8/10 with numbness and tingling. Low back pain radiating to the bilateral buttocks and down the right leg. Examination of the cervical spine revealed a restricted range of motion and pain and tenderness on palpation with a positive foraminal compression and l'hermitte test. Examination of the right shoulder revealed tenderness on palpation with decreased

range of motion and a positive Neer and Appley test. Examination of the lumbar spine also revealed pain and tenderness on palpation with restricted ranges of motion and a positive straight leg raising, Kemp, and femoral nerve stretch.

The attending physician formulated the following diagnosis: cervical/lumbar sprain/myofascitis with discogenic radiculopathy; rule out cervical and lumbar radiculitis, right shoulder contusion and derangement.

Dr. Scoly recommended physical therapy and prescribed Daclofen 20 mg tablet and Meloxican - 15 mg tablet for pain relief and to facilitate progress of patient's in-office therapy. The patient was initiated on physical therapy. On 1/9/20,

the Daclofen 20 mg tablet was dispensed.

In a follow-up evaluation on 1/30/20, the Assignor continued pain as described above. After a complete examination recommendations were made for continued physical therapy and for EMG/NCV studies of the upper extremities.

On 2/27/20, the Assignor was re-evaluated by Dr. Scoly and physical examination indicated pain and restricted ranges

of motion in the cervical and lumbar spine with positive objective testing. In a follow-up evaluation on 5/21/20,

Dr. Scoly recommended Daclofen 20 mg and Diclofenac sodium 1.5% solution for pain relief and to facilitate the

progress of patient's in-office therapy. The prescribed medication was dispensed by the Applicant on 5/22/20.

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. Hadhoud denied reimbursement based on his Independent Peer Review Report. He reviewed multiple medical records and stated that in his opinion the medications prescribed on 1/9/20 and 5/22/20 were

not medically necessary. More particularly that Diclofenac is a muscle relaxer used to relieve skeletal muscle spasm

and associated pain in acute musculoskeletal conditions in certain cases according to the patient's presentation and

initial response to basic non-steroidal anti-inflammatory medication.

Dr. Hadhoud referenced a ODG Treatment Guidelines - Integrated Treatment Disability Duration Guidelines, Low Back

- 2013 herein it is stated that "muscle relaxants have not been shown to be more effective than non-steroidal anti-inflammatory medication. There is no additional benefit gained by using muscle relaxers in combination with NSAID's

as using NSAID's alone.

Dr. Hadhoud stated in this case the patient was prescribed oral NSAID's (Mobic) on the same day of 1/7/20. Therefore, the medication in dispute was not medically necessary.

With respect to Mobic 15, Dr. Hadhoud stated that it was also not medically necessary and the first line of defense

should be conventional non-steroidal anti-inflammatory drugs (NSAID's). (Physical Medicine & Rehabilitation Fifth Edition, 2016). He stated that Mobic is a non-steroidal anti-inflammatory drug. It works by reducing hormones that

cause inflammation and body of pain. It is reasonable to prescribe NSAID's to control the patient's symptoms

especially in the absence of any conditions or contra indications or medication.

Lastly, with respect to the Diclofenac solution provided on 5/22/20, the Peer Reviewer stated that standards of care regarding prescribing comparable medication for patients after a motor vehicle accident, to first evaluate the patient,

the pain and history and to perform physical exam. Usually after any trauma, the patients are commonly diagnosed

with sprains and strains of soft-tissues in the injured areas. It is usually addressed with a course of conservative therapy including exercise and the patient should be evaluated after 4-6 weeks to assess patient's response to treatment.

Due to failure to control the patient's symptoms, and there is a contra indication for the use of oral medications, topical medication may be considered.

Additionally, Diclofenac sodium is an anti-inflammatory medication that was prescribed to the patient in a topical form. There is no contra indication to the use of oral NSAID's. In its context there is no documentation as to how the specific medication for the same injury provide any better results than other oral NSAID's (Mobic) which was prescribed on the same day - 1/7/20

Additional reference was made to Pain Medicine, 2010 - NSAID Therapy For Musculoskeletal Pain By Drs.

Haroutiunian, Drennan and Littman wherein the conclusion stated "Topical NSAID's may vary significantly in their absorption rate and pharmacodynamics effects. Some topical formulations have been shown to be more effective than placebo in multiple studies or have comparable efficacy and a better safety profile than oral NSAID's. In acute

and chronic low back pain, right musculoskeletal pain and peripheral neuropathic pain syndrome, the current evidence

does not support the need of topical NSAID's. Accordingly, he recommended against same.

Dr. Frank Segreto submitted a Peer Review Rebuttal and noted that Dr. Hadhoud allowed the Meloxicam 15mg tablet, but

disallowed Baclofen 20mg tablet and Diclofenac sodium 1.5% solution. As evident from the medical records and Dr. Hadhoud's peer report; it is very clear that the patient was severely affected due to the accident, remained symptomatic,

and was thus in need of Baclofen 20mg tablet and Diclofenac sodium 1.5% solution. Since the patient needed Meloxicam 15mg tablet to treat pain and inflammation; he

was in need of Baclofen 20mg tablet and Diclofenac sodium 1.5% solution too such as to treat the moderate-to-severe pain conditions in this case.

With respect to Baclofen 20mg tablet:

The patient was evaluated and the treatment plan included the recommendation for a course of conservative treatment and prescription of medications. The treating physician stated that his choice for the first line of therapy or standard of care was a recommendation of conservative care and medication. He required some treatment for temporary relief from pain with the course of conservative treatment for the treatment of the aforementioned issues. Hence, the Baclofen 20mg tablet was prescribed."Baclofen is a muscle relaxer and an antispastic agent. It is used to treat muscle symptoms caused by multiple sclerosis, including spasm, pain and stiffness.
It is sometimes used to treat muscle spasms and other symptoms in people with injury or disease of the spinal cord."(What is b a c l o f e n ? s o u r c e : https://www.emedicinehealth.com/drug-baclofen/article _em.htm). This shows the medical necessity of the prescribed Baclofen for the treatment of musculoskeletal and spinal cord injuries in this case.
Additionally, that the ODG Guidelines are an inappropriate basis for the denial of Baclofen tablets. These guidelines 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.
Dr. Hadoud cited an article which stated that "the use of muscle relaxants remains controversial. One reason is that it is unclear what role muscle spasms play in the mechanical low back pain." It should be noted that the patient was involved in a motor vehicle accident. The patient had complaints of pain in the neck, bilateral shoulders, and lower back along with positive findings as stated above. Baclofen is a muscle relaxer and an antispastic agent. It is used to treat muscle symptoms caused by multiple sclerosis, including spasm, pain, and stiffness. It is sometimes used to treat muscle spasms and other symptoms in people with injury or disease of the spinal cord. Baclofen is another medication that has many applications, one of which is treating musculoskeletal pain (present here). It has been found to be quite effective. (Arch Phys Med Rehabil. 2010 May; 91(5): 816-831. A Systematic Review of Pharmacological Treatments of Pain Following Spinal Cord Injury. Robert W. Teasell, MD, FRCPC et. al.)
With respect to Diclofenac sodium 1.5% solution:

Dr. Hadhoud stated that "if there is failure to control the patient's symptoms by the above- mentioned lines of treatment

and there is contraindication to use oral medications (e.g. liver conditions), topical medication would be considered to

deliver systemic effect instead of the oral route. This was not the case here." Further Dr. Hadhoud stated that "there was

no contraindication to use oral NSAIDs. In this context, there is no documentation as to how this specific medication in

the form of a solution would provide any better results than oral NSAID (Mobic) which the patient was prescribed on

the same day of 01/07/20. Those oral medications are significantly more cost effective than the topical solution." Dr.

Segreto noted that contraindication to use oral medications is not the only indicator for prescribing the topical

formulation. The peer reviewer essentially states that the topical delivery should not be used and instead oral

administration of medications should have been given. That is somewhat missing the point and reversing the cause and

effect. While the topical application may be the only option for some patients who are unable to tolerate oral

medication, there is no established medical standard that people who are able to tolerate oral medication should not be

given topical medication. Quite contrary, the whole advantage of topical medication is that it prevents adverse effects

before they start and has numerous additional advantages over oral administration in both groups of patients (those who

can and cannot tolerate oral application). Therefore, oral medications can often cause gastrointestinal problems even in

people who do not generally have them. This lengthy and thoroughly researched study opposes the opinion in the peer

report. As far as dosing is concerned, if a patient disregards medical directions, just about any medication may be

overdosed, whether oral or topical, with research suggesting that topical is less likely to overdose. Either way, the patient

was instructed on how/where to apply the medication and what quantity.

Also, the topical medications are indeed a better option than oral medication for the treatment of post-traumatic acute

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. As a

result, healthcare providers have become increasingly interested in new ways to manage pain and develop

customized treatment plans for their patients. Topical trans-dermal pain medication may offer benefits such as

customizable dosages and formulations, with various mechanisms of action, the likelihood of lower systemic absorption

with minimization of side effects, more convenience and consequently improved adherence to treatment regimens,

and minimization of the risk of abuse and addiction. (Branvold A, Carvalho M (2014) Pain Management Therapy:

The Benefits of Compounded Transdermal Pain Medication. J Gen Practice 2: 188. doi:10.4172/2329- 9126.1000188)

In this case, the diclofenac solution was prescribed to treat the post-traumatic musculoskeletal pain. Non-steroidal anti-inflammatory drugs (NSAIDs) are commonly prescribed medications for the treatment of musculoskeletal disorders. Several NSAID formulations have been available in the topical form including diclofenac preparations, ketoprofen gel, piroxicam patch/cream, and ibuprofen cream/gel among others. Efficacy comparisons between topical formulations have been evaluated. Diclofenac has been the most widely studied in reference to musculoskeletal disorders. (A Review of Topical Diclofenac Use in Musculoskeletal Disease, Bindu Nair and Regina Taylor-Gjevre, Pharmaceuticals (Basel). 2010 Jun; 3(6): 1892-1908. Published online 2010 Jun 11. doi: 10.3390/ph3061892)

Additionally, increasing evidence supports the efficacy of 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.
Dr. Hadhoud cited an article and noted that "NSAIDs, in any dosage form, lack demonstrated efficacy in clinical trials for neuropathic pain including for peripheral neuropathies." and further stated that "in this case, I do not see a medical necessity to prescribe Diclofenac to be included in a topical form as in this case. Dr. Segreto opined that the patient had neuropathic pain. In this case, the patient had pain in the cervical and lumbar spine, which was caused by a motor vehicle accident. The spinal cord injury can lead to neuropathic pain

"Neuropathic pain is thought to be associated .with peripheral nerve problems, such as neuropathy caused by diabetes or spinal stenosis, injuries to the brain or spinal cord can also lead to chronic neuropathic pain." (Neuropathic Pain (Nerve Pain), Medical Author: Danette C. Taylor, DO, MS, FACN)

I agree with the treating physician that the patient was in need of Baclofen 20mg tablet and Diclofenac sodium 1.5% solution provided by Ready Rx LLC., on 1/9/2020 and 5/22/2020 for the treatment of his injuries and that it was medically necessary for the reasons laid out in the rebuttal. In prescribing the Baclofen 20mg tablet and Diclofenac sodium 1.5% solution, the prescribing physician has not deviated from any standard of medical care and is within the scope of accepted medical practice.

Lastly, I presided over A.A.A. Case No. 17-20-1182-3329 which involves the same accident and eligible injured person; I considered the Respondent's biomechanical analysis report to be unconvincing in that much of the conclusions were based upon hearsay. Additionally, the analysis report was not in the form of an affidavit. I also found the majority of the report was boiler-plate and generic.
After reviewing all the evidence, there are no specific guidelines delineating the absolutely structured path for the medications to be universally prescribed to all patients. Accordingly, great deference should be given to the treating provider charged with the responsibility to examine, diagnose and treat a patient who presents with symptoms and positive clinical findings. It is well settled that it is up to the clinician to decide, based on the circumstances of the

injury and the individual patient's exam findings, whether the prescribed drugs is appropriate. It is intended to help the clinician make decisions regarding care based on all of the information presented to him/her for each patient. Each patient must be examined as an individual and the decisions regarding his/her treatment shall be taken based on the clinical presentations at the time of examination. I find that the recommended pharmaceuticals were necessary. Clearly, there is no clear consensus as to the efficacy of the pharmaceuticals that were recommended. There is medical literature to both support the use of the prescribed medications and to recommend against their use. I give deference to the treating physician and find that there was no proof that he deviated from standard medical practice.

As the Respondent failed to provide a Fee Code Affidavit, Applicant is awarded payment for the pharmaceuticals in dispute in the sum of $1,829.60.

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**
	Ready RX LLC Pharmacy	**01/09/20 - 01/09/20**	**$371.68**	**Awarded: $371.68**

	Ready RX LLC Pharmacy	**05/22/20 - 05/22/20**	**$1,457.92**	**Awarded: $1,457.92**
Total			**$1,829.60**	**Awarded: $1,829.60**

B. The insurer shall also compute and pay the applicant interest set forth below. 01/21/2021 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.

12/17/2021
(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:
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Electronically Signed

Your name: Gary Peters
Signed on: 12/17/2021