American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

WalleGood Inc (Applicant)	AAA Case No.	17-21-1199-8005
	Applicant's File No.	118458
- and -	Insurer's Claim File No.	610216
	NAIC No.	Self-Insured
MVAIC (Respondent)		

ARBITRATION AWARD

I, Meryem Toksoy, 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 (EM)

1. Hearing(s) held on 06/15/2022
   Declared closed by the arbitrator on 06/15/2022

   Naomi Cohn, Esq. from Ursulova Law Offices P.C. participated in person for the Applicant

   Jeffrey Kadushin, Esq. from Marshall & Marshall, Esqs. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$607.55**, 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

   In dispute is a claim by the Applicant, WalleGood, Inc., as the assignee of a 49-year-old male who was injured as a passenger in a motor vehicle accident on 05-25-19.

   Applicant seeks to be reimbursed **$607.55** for **durable medical equipment (DME)**, namely a **left knee orthosis** which was prescribed by Vladimir Onefater, MD. The record reflects that the Applicant provided this item to the assignor on 06-24-19.

On its end, Respondent asserts the **defense of lack of medical necessity** and relies upon the **peer review** of Damion Martins, MD to uphold its denial.

In opposition, Applicant has submitted a rebuttal statement by Dr. Onefater.

During the hearing, no arguments were presented with respect to the fee schedule, Applicant's prima facie case, or the timeliness and/or propriety of Respondent's denial.

The parties agreed that the only issue for me to resolve is medical necessity.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association and the oral arguments of the parties' representatives.

There were no witnesses.

LEGAL FRAMEWORK:

A presumption of medical necessity attaches to an applicant's properly-submitted claim form and upon its receipt, the burden shifts to the insurer to demonstrate lack of medical necessity. Amaze Med. Supply v. Eagle Ins. Co., 2 Misc.3d 128(A), 2003 NY Slip Op 51701(U)(App Term, 2nd Dept, 2nd and 11th Jud Dists., 2003).

To succeed on this defense, the insurer is required to "set forth with sufficient particularity the factual basis and medical rationale underlying that determination." Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 2006 NY Slip Op 51185(U)(App Term, 2nd Dept, 9th and 10th Jud Dists., 2006).

Further, defending a denial of first-party benefits on the ground that the billed-for services were not medically necessary requires the insurer to establish that the services were "inconsistent with generally accepted medical/professional practice[s]." CityWide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co., 3 Misc.3d 608 at 609, 777 N.Y.S.2d 241 Civ. Ct. Kings Co. 2004).

If the insurer can establish that the services were not medically necessary, "the burden shifts to the plaintiff which must then present its own evidence of medical necessity." West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 5187(U) (App Term, 2nd Dept, 2nd & 11th Jud Dists., 2006).

To succeed, Applicant must put forward evidence that meaningfully refers to and rebuts the conclusions set forth in the peer review report. High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A), 2010 N.Y. Slip Op.50447(U)(App. Term, 2nd Dept, 2nd, 11th & 13th Jud. Dists, 2010).

DECISION:

Respondent has met its evidentiary burden. The peer review authored by Damion Martins, MD adequately sets forth the factual basis and medical rationale to support the conclusion that the left knee orthosis was not indicated for the assignor. That being so, the burden shifts to the Applicant to counter Respondent's showing.

Having carefully considered all of the evidence, I find that Applicant has failed to prove its case. My decision accounts for the rebuttal statement by Dr. Onefater as well as the medical records submitted by the Applicant, namely:

- The report for the evaluation performed on 06-14-19 by Richard Sternberg, DC. According to this document, there were no range of motion deficits; muscle strength was graded as 5/5; sensation and reflex response were found to be normal; orthopedic testing, i.e., McMurray and Apley, elicited a negative response; and the prognosis was deemed to be "good."

- The report for the evaluation performed by Vladimir Onefater on 06-15-19, which is also the same day when the knee brace was prescribed. This document shows that the assignor ambulated with a normal gait; with respect to his range of motion, muscle strength, and reflex response, the form was left blank; for orthopedic findings, the McMurray test was marked as positive for the left knee (which is opposite to the negative result noted by Dr. Sternberg for the exam he conducted just one day prior); and in terms of sensory function, it was reported to be decreased, with an entry that only refers to a finger of the left hand. Based on this information, the assignor's prognosis was deemed to be "fair."

In balancing the two positions, I find that the more persuasive proof on the issue of medical necessity resides with the Respondent. Therefore, the claim is hereby denied in full.

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 claim is DENIED in its entirety

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

07/06/2022
(Dated)

Meryem Toksoy

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:
9d2bd637f768a0f3136df0ff315d80f3

Electronically Signed

Your name: Meryem Toksoy
Signed on: 07/06/2022