American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Nu Age Medical Solutions, Inc. (Applicant)	AAA Case No.	17-22-1260-7761
	Applicant's File No.	BT21-141039
- and -	Insurer's Claim File No.	218017038
	NAIC No.	Self-Insured
Avis Budget Group (Respondent)		

ARBITRATION AWARD

I, Debbie Kotin Insdorf, 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 09/27/2023
   Declared closed by the arbitrator on 09/27/2023

   Sabine Sciarrotto from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   Kerianne Keller from Avis Budget Group participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,218.00**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The billed amount is in accorance with the fee schedule.

3. Summary of Issues in Dispute

   The Applicant is seeking reimbursement for the rental of SAM unit to Assignor DM, following a motor vehicle accident on 4/23/21. The Respondent issued a timely denial based on a peer review by Dr. Alan P. Wolf.

4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for $1,218.00 for rental of SAM unit from 5/28/21 through 6/17/21.

The Respondent issued a timely denial based on a peer review.

On 4/23/21, the twenty three year old Assignor was a front seat passenger in a motor vehicle when an accident occurred. He went to Franklin Hospital where x-rays and CT scan (with negative results) were performed.

On 4/29/21 an initial examination was performed by Dr. Ruben Oganesov. The Assignor complained of radiating neck pain, mid back pain and radiating low back pain. Examination of the cervical spine revealed decreased range of motion with pain, tenderness and positive Spurling test. There was limited range of motion and tenderness when examining the thoracic spine. Examination of the lumbar spine revealed decreased range of motion with pain, tenderness and positive Straight Leg Raising test.

The doctor's impressions included cervicalthoracic radiculopathy and lumbosacral radiculopathy.

Dr. Oganesov's treatment plan included physical therapy and prescription for a SAM unit for six weeks.

On 5/07/21, the Assignor acknowledged receiving the SAM unit from the Applicant.

On 7/16/21, Dr. Alan P. Wolf reviewed documents made available to him to determine the medical necessity for the SAM unit supplied 5/28/21 through 6/17/21. He did not find it medically necessary.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a 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 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co.,196 Misc.2d 801, 766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical

rational for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply the facts of the case and only then may she properly conclude the services in issue were not medically necessary due to the provider's violation of the generally accepted medical standards.

Dr. Wolf wrote that the standard of care for medical supplies would be treatments that would not represent a duplication of services that are standard in a physical therapy program.

Dr. Wolf noted there was no specific information as to how the SAM unit was necessary or how it would aid or change the treatment plan already in place.

Dr. Wolf cited to an article which pointed out that the use of the SAM may have potential effects in treatment of trapezius muscle spasm, rotator cuff tendinopathy and knee osteoarthritis as well as tendon pain relief and recovery. However, herein there was no documentation of a trial of ultrasound in the physical therapy program.

In the instant case, the conclusion of the peer reviewer upon which the denial was based was supported by a sufficient factual foundation and medical rationale to warrant rejection of Applicant's claim and accordingly, was sufficient to support the defense of medical necessity.

The burden now shifts to applicant to refute Respondent's evidence. See, Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co., 2008 NY Slip Op 50347 (U) (App Term 2d Dept., Feb. 21, 2008); A. Khodadadi Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 16 Misc.3d 131,(A), 841 N.Y.S.2d 824 (Table), 2007 NY Slip Op 51342 (U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007).

On 8/02/23, Dr. Oganesov (the treating doctor) wrote a rebuttal to the peer review. He emphasized that the prescription indicated how the device would assist the Assignor. It stated, "for multi hour treatment to reduce pain and accelerate the natural healing cascade for musculoskeletal related injuries."

Dr. Oganesov pointed out the SAM unit is able to be used safely at home and therefore not necessary for the treatment to be given in office taking away valuable office treatment time.

Dr. Oganesov noted, "In addition to FDA approval, there is an abundance of medical literature indicating that SAM is a recommended, efficacious treatment for musculoskeletal pain and soft tissue trauma." He cited to clinical literature which supports the use of SAM as it resulted in reducing pain and improving function in muscles, ligaments and tendons.

An addendum was written by Dr. Wolf. He reiterated that the SAM unit was not needed to affect the treatment options. The SAM unit was prescribed just six days after the motor vehicle accident. There was no documentation indicating the benefit of the SAM over physical therapy modalities, including ultrasound.

There was a rebuttal to the peer review addendum dated 9/25/23 and submitted to the ADR center on 9/26/23. The parties were advised that this document would not be considered since it was submitted one day prior to the scheduled Arbitration hearing. I find that Respondent would have been prejudiced if I were to consider the rebuttal to the peer review addendum. The Respondent did not have adequate time to review.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I find Respondent's denial cannot be upheld. The treating doctor adequately and persuasively refuted the peer reviewer's argument that the SAM unit was not necessary in this case for the type of injuries sustained and when the Assignor was already receiving physical therapy in the office setting.

Accordingly, the Applicant is awarded $1,218.00.

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**

	Nu Age Medical Solutions, Inc.	**05/28/21 - 06/17/21**	**$1,218.00**	**Awarded: $1,218.00**
Total			**$1,218.00**	**Awarded: $1,218.00**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/02/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after Apr.5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element until such action is taken. 11 NYCRR 65-3.9(c). In accordance with 11 NYCRR 65-3.9 (c), interest shall be paid on the claim (s), totaling $1218.00 from 8/02/22, the date the arbitration was commenced.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The insurer shall pay the applicant an attorney's fee, in accordance with 65-4.6(d). This amendment takes into account that there is an attorney fee of 20% of benefits plus interest with no minimum fee and a maximum attorney fee of $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 NY
SS :
County of New York

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

10/07/2023
(Dated)

Debbie Kotin Insdorf

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:
bf37fa149a688ebcba3cf147854783d2

Electronically Signed

Your name: Debbie Kotin Insdorf
Signed on: 10/07/2023