American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

UO Medical Supplies Corp (Applicant)	AAA Case No.	17-22-1269-9723
	Applicant's File No.	93582
- and -	Insurer's Claim File No.	8754824590000001
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Frank Marotta, 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-KH

1. Hearing(s) held on 10/24/2023
   Declared closed by the arbitrator on 10/24/2023

   Ilya Murafa, Esq. from Law Offices of Zara Javakov, Esq. P.C. participated virtually for the Applicant

   Katherine Shepardson, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,316.72**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The Applicant amended the amount in dispute to $3,230.82 by adjusting the fees due for CPT Code E0217 and E0731.

   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulate and agree that the Applicant established its prima facie burden, the Respondent timely denied the claims in question and the amount in dispute does not exceed the maximum permissible fee allowable for items of medical supplies under the New York State Medicaid Durable Medical Equipment fee schedule adopted for no-fault claims.

3. Summary of Issues in Dispute

The record reveals that the Assignor-KH, a 21-year-old-female, sustained injuries in a motor vehicle accident on 5/28/22.

The Applicant seeks reimbursement for medical supplies provided to the Assignor on 6/29/22.

The Respondent denied reimbursement based on a peer review by Dr. Howard Levy dated 8/29/22.

The issue is the medical necessity for the supplies dispensed.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of $3,316.72, amended to $3,230.82, for disputed fees in connection with medical supplies provided to the Assignor on 6/29/22.

This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing. In accordance with 11 NYCRR 65-4.5(o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations. The parties appeared and the hearing was conducted virtually via zoom.

In support of its denial the Respondent relies on the peer review by Dr. Howard Levy dated 8/29/22. Amaze Med. Supply, Inc. v. Eagle Ins. Co., 2003 NY Slip Op 51701(U) (NY App. Term 2003); see also Rockaway Boulevard Medical P.C. v. Travelers Property Casualty Corp., 2003 N.Y. Slip Op. 50842(U), 2003 WL 21049583 (App. Term 2d & 11th Dists. Apr. 1, 2003).

Dr. Levy provides a history of the Assignor as a 21-year-old male who was involved in a motor vehicle accident on 5/28/22 as a restrained back seat passenger of the vehicle. The vehicle was hit on the front side. There was no loss of consciousness. The claimant sustained injuries to the neck, mid-back, bilateral shoulders, and lower back. Following the accident, the claimant did not go to the hospital. As per the initial physical therapy evaluation report dated 6/1/2022 from Core Care, P.T., the claimant was recommended

physical therapy. The claimant received physical therapy from 6/1/2022 to 6/29/2022 in a total of 8 sessions for the cervical spine and lumbar spine. None of the sessions were received for the bilateral shoulders. The reports were made available for my review. The claimant received chiropractic treatment from 6/13/2022 to 6/16/2022 in a total of 4 sessions for the cervical spine and lumbar spine. The reports were made available for my review.

As per the evaluation report dated 6/13/22 by Wei Hong Xu, N.P., the claimant had complaints of neck, bilateral shoulders, and lower back pain rated as 7-9/10 on the pain scale. The overall pain was aggravated by movements. Examination of the cervical spine revealed tenderness at the C3-C7 levels. The range of motion was decreased. Trigger points were noted. Examination of the bilateral shoulders revealed tenderness and a decreased range of motion. An impingement test was positive for the right shoulder. Examination of the lumbar spine revealed tenderness in the L3-L4 regions. The range of motion was decreased. The diagnoses were cervical disc displacement, bilateral shoulders tendinopathy, and bulging lumbar disc. The MRIs of the cervical spine, bilateral shoulders, and lumbar spine were ordered. Physical therapy was advised. Pain medications were prescribed. On 6/13/22, the claimant underwent a cervical trigger point injection over the bilateral paracervical and bilateral trapezius musculature, under local anesthesia, by Wei Hong Xu, N.P. The pre-operative and post-operative diagnoses were myofascial pain syndrome. A prescription dated 6/13/22 by Wei Hong Xu, N.P., for an orthopedic pillow, lumbar cushion, lumbosacral support, cervical collar, bedboard, water circulation cold/hot pad, massager, shoulder support, EMS unit, hydrotherapy whirlpool, and EMS belt was made available for Dr. Levy's review. Dr. Levy also refers to a delivery receipts dated 6/29/22 from UO Medical Supplies Corp., for E.M.S. unit, E.M.S. belt, infrared heating lamp, massager, water circulating heat pad with pump, cervical pillow, cervical multiple post collar, lumbar-sacral orthosis, general use back cushion, bedboard, egg crate mattress, shoulder vest type, and hydrotherapy whirlpool.

When an insurer relies on a peer review to support their lack of medical necessity defense, the peer reviewer must provide a factual basis and medical rationale in support of its opinion that the services in question were not medically necessary, including evidence of a of medical standards. Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219 (U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 546-47 (Civ. Ct. Kings Co. 2005). If a respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant who must present its own evidence of medical necessity. See West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) at 2 (App. Term 2d & 11th Dists. Sept. 29, 2006) citing Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed]). See also Lynbrook Medical of New York, PC v Praetorian Ins. Co., 48 Misc. 3d 139(A); 2015 NY Slip Op 51226(U) (App. Term, 2d, 11th and 13th Jud Dists 2015); Alfa Medical Supplies v. Geico General Ins. Co.,2013 NY Slip Op 50064(U),38 Misc. 3d 134(A) (App. Term, 2d, 11th and 13th Jud Dists 2013).

The Applicant provides a peer review rebuttal by Dr. Drora Hirsch dated 2/6/23. Dr. Hirsch notes that the Assignor, a 22-year-old male was a restrained back seat passenger

of a vehicle involved in a motor vehicle accident on 5/28/22 resulting in injuries to his neck, mid back, bilateral shoulders, and low back. The patient presented for an examination on 6/13/22 with the complaints of recurrent headache; constant, aching, hot-burning, shooting, stiff, tight and sore bilateral neck pain with stiffness, rated at 8/10, the neck pain was radiating to the back, bilaterally into the head and bilateral shoulders, the neck pain was worse by bending; intermittent, achy, stiff and sore bilateral shoulder pain, rated at 2/10, the shoulder pain was made worse by cleaning, moving items, laundry, movement and extension; constant, achy, pressure like, stabbing, pulling, stiff, tight and sore bilateral mid back pain, rated at 8/10, the mid back pain was worse by sitting a long time and standing a long time as well as constant, aching, pressure like, sharp, shooting, stabbing, tight, pulling, stiff, tight and tender lower back pain, rated at 9/10, the lower back pain was radiating to the bilateral hips, thighs and buttock, the lower back pain was made worse by going up stairs, going down stairs, such as cleaning, moving items, laundry, movement, sitting a long time, standing a long time, walking and bending forward. Examination of the cervical spine revealed pain in C3-C7 region bilaterally on palpation of cervical facet with palpable trigger points in the muscles of the head and neck. Range of motion of the cervical spine was decreased and painful. Examination of the thoracic spine revealed tenderness at paraspinal muscles with increased pain on hyperextension. Examination of the lumbar spine revealed pain at L3-L4 paraspinal region with pain over the lumbar intervertebral spaces (discs) on palpation. The range of motion of the lumbar spine was decreased and painful. Examination of the bilateral shoulders revealed tenderness over the right rotator cuff and tenderness over the left bicep muscle as well as pain with overhead raise. Impingement Sign was positive on the right. The diagnosis was cervical disc displacement, headache due to trauma, bilateral shoulder tendinopathy, spasm of thoracic back muscle and bulging lumbar disc. The patient was undergoing physical therapy, chiropractic, and acupuncture treatment; ordered MRIs; referred functional capacity testing, trigger point injections and follow up. The patient was prescribed medications and medical supplies for home use.

Initially, Dr. Hirsch expresses disagreement with Dr. Levy's statement regarding the standard of care for durable medical equipment. According to Dr. Hirsch, the prescribed medical supplies maintain official referral code as durable medical equipment and are present on most standard medical-supply checklists. The devices were prescribed so that they could contribute to the claimant's plan of care and aid in the early recovery of this claimant. Hence, the prescription satisfies the definition of medical necessity. The patient was prescribed the durable medical equipment as they help in maintaining proper position of the spine and various joints and help in reducing certain painful movements or postures that cause pain during the healing process and can cause re-injury, thereby allowing the patient to return to his activities of daily living in the most expedient manner. Additionally, these supplies provided palliative care to the patient. Palliative treatment offers temporary relief and that was the goal of my therapy plan. Any supplies that can ease the patient's pain are medically necessary and warranted.

The Applicant submitted a bill in the amount of **$1,559.83** for providing the Assignor with a positioning cushion/pillow, cervical multiple post, lumbar sacral orthosis, general use wheelchair cushion, bed board, dry pressure mattress, and shoulder vest type on 6/29/22. The Respondent reimbursed the Applicant for the cervical pillow in the amount

of $22.04, acknowledged on the AR 1 and denied the remaining supplies based on Dr. Levy's peer review as medically unnecessary.

Cervical Multi-Post Collar:

With respect to the cervical collar, Dr. Levy notes that in this clinical setting, the claimant was involved in a motor vehicle accident on 5/28/22 and sustained an injury to the neck and was prescribed a cervical collar. According to Dr. Levy the cervical was not medically necessary as the standard of care for patients with acute neck pain, including WAD is for the clinicians to education of the patient to return to normal, nonprovocative pre-accident activities as soon as possible, minimize use of a cervical collar and perform postural and mobility exercises to decrease pain and increase ROM. In support Dr. Levy cites to the 2017 Clinical Practice in the Journal of Orthopedic & Sports Physical Therapy. Therefore, based on the cited article and the available medical records, the cervical collar provided to the claimant was not medically necessary. As per the above-cited article, the claimant should have continued receiving conservative care in the form of physical therapy, chiropractic treatment, and acupuncture treatment for better clinical outcomes.

As for the cervical collar Dr. Hirsch notes that it should be left to the discretion of the treating physician to decide which course of treatment, he wants the patient to use, as long as it works for the patient's aim to reduce his complaints; does not result in any side effects and is safe for the patient to use. The patient was prescribed a cervical collar as it is used in the setting of soft tissue injury because immobilization by a collar during the acute stage of an injury reduces pain and muscle spasm. The patient was prescribed a cervical collar to be used in conjunction with the conservative treatment he was receiving. The cervical collar is a dynamic orthosis, which incorporates the benefits of warmth, support and relief from minor muscle spasm and cervical sprain/strain. It provides limitations of full motion in flexion, extension, lateral bending and rotation. Therefore, usage of a cervical collar was indicated in relation to the cervical sprain/strain symptom in this patient. Additionally, the cervical collar was prescribed to provide palliative care to this patient due to its stabilization effect.

Dr. Hirsch notes that in the study titled "Indications of Philadelphia collar in the treatment of upper cervical injuries." published in Eur J Emerg Med. 2001 authored by Cosan TE, et al the authors concluded "*It is our belief that, in the absence of both neurological abnormality and compression to neural structures observed in CT/MRI, treatment with the Philadelphia collar alone is safe, cost-effective and easily applicable for many cases of upper cervical injury.*" Dr. Hirsch further references a 2008 Book entitled AAOS Atlas of Orthosis and Assistive Devices by, John D. Hsu, J et al indicating recent studies have shown that whiplash injuries can be successfully treated with a combination of therapy, rest, exercise, and the use of a cervical collar.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find for the Respondent.

Dr. Hirsch is not the prescribing healthcare provider; as such, I am presented here with a question of fact as to whether the cervical collar was medically necessary to be

determined based on conflicting opinions of two experts neither of which examined or prescribed the device in issue. It has been found that conflicting medical expert opinions are sufficient to establish the existence of a triable issue of fact. See Advanced Orthopedics, PLLC v. New York Central Mutual Fire Insurance Company, 42 Misc.3d 150 (A), 2014 N.Y. Slip Op. 50418(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2014); Pomona Medical Diagnostics, P.C. v. Praetorian Insurance Company, 42 Misc.3d 126(A), 2013 N.Y. Slip Op. 52131(U) (App Term 1st Dept. 2013). Therefore, the answer to the question whether the cervical collar is medically necessary must be determined by which expert opinion is accepted based on a review of the medical records and authority cited.

The record reveals that the cervical collar was one of many supplies prescribed to the Assignor within the two weeks of the accident. The report of the examining healthcare provider notes that the examination of the cervical spine revealed it to be supple, with a normal curvature and the absence of any instability. Pain was reported with movement, but anterior flexion, extension, left/right lateral rotation, and right lateral flexion were reported to be within normal limits. Left lateral flexion was reported as decreased (35 degrees verse 45 degrees normal). The report of the provider dated 6/13/22 when the supplies were prescribed does not include a complete neurological examination of the cervical spine or the upper extremities. The only neurological finding indicates that a SLR test was normal to 90 degrees bilaterally.

Considering the 6/13/22 report of the prescribing healthcare provider I am persuaded by the opinion of Dr. Levy, despite the rebuttal arguments made by Dr. Hirch that the cervical collar was not medically necessary. Dr. Hirsch supports her decision on a 2001 article a 2008 text while Dr. Levy relies on the more current 2017 clinical guidelines in the Journal of Orthopedic & Sports Physical Therapy advising that in cases of WAD a clinician minimize use of a cervical collar and perform postural and mobility exercises to decrease pain and increase range of motion. Moreover, Dr. Hirsch notes that treatment with a Philadelphia collar alone is safe, cost-effective, and easily applicable for many cases of upper cervical injury in the absence of both neurological abnormality and compression observed in CT/MRI. On the same day the Assignor was prescribed the cervical collar, she was also referred for an MRI of the cervical spine. Therefore, without any evidence that there is an absence of both neurological abnormality and compression by imaging prescribing the cervical collar would be contraindicated by the authority Dr. Hirsch's cites to support the cervical collar.

Considering all the evidence presented, I find that the cervical collar was not medically necessary.

Lumbar Sacral Orthosis:

Dr. Levy notes that in this case, the claimant sustained an injury to the lower back and was prescribed lumbar sacral support. However, as per Distractive and mobility-enabling lumbar spinal orthosis - Denis J DiAngelo, Daniel C Hillyard, 2016, Lumbar spinal orthoses Introduction Volume 3. Dr. Levy reports that these devices claim to axially decompress the spine but lack clinical or experimental evidence to support their efficacy. Dr. Levy goes on to say that although many different orthoses

exist for treating lower back problems, we are not aware of any that provide the benefits of therapeutic exercise or enable independent living and return to active work. As per the medical records, the claimant was already engaged in conservative care. The claimant should have continued the conservative treatment in the form of physical therapy, acupuncture treatment, and chiropractic treatment as it has clinically proven efficacy in pain management. Therefore, based on the above-cited article, the lumbar-sacral support provided to the claimant was not medically necessary.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find that the Respondent failed to meet its prima facie burden refuting the medical necessity for the LSO with the peer review by Dr. Levy. I read the material cited by Dr. Levy and find it discusses a specific type of LSO, noted by Dr. Levy to be a recently designed and dynamic LSO developed to provide relief from pinched nerves or disc or spinal cord compression. The problem with the peer review is it fails to establish that the lumbar orthosis prescribed on 6/13/22 is the type discussed in the cited material. Therefore, I find Dr. Levy's peer review fails to set forth a sufficient factual basis and medical rationale for finding the lumbar orthosis provided on 6/29/22 lacking in medical necessity. Jacob Nir, M.D. v. Allstate Ins. Co., supra.

The Applicant is awarded its claim in the amount of $759.92.

General Use Wheelchair Cushion:

Dr. Levy reports that the claimant complaints neck and lower back pain and was prescribed a back cushion for pain management. Dr. Levy cites to the article Modelling, design, and control of a new seat-cushion for pressure ulcers prevention, January 22, 2022, by Daniele Mannella, et al indicating "*Pressure ulcers are a frequent complication in patients having limited activity and mobility (e.g., elderly people, spinal cord injury patients, people with disabilities, etc.). The aim of this work is the conceptual design, modeling, and control of a new seat cushion for pressure ulcer prevention. The whole system (constituted by the seat cushion equipped with a real-time pressure mapping with closed-loop control) is designed to identify the critical points on the human skin, before pressure ulcer creation, and to be able to distribute the contact pressure between the human and cushion avoiding wound creation. The seat cushion is constituted of soft air cells actuated by airflow. To define the shape and size of the soft air-cells, finite element simulations are carried out, analyzing the internal volume reduction with external loads application to reproduce the variable stiffness.*" Dr. Levy opines that pressure ulcers are a frequent complication in patients having limited activity and mobility (e.g., elderly people, spinal cord injury patients, people with disabilities, etc.). However, there was no evidence that the claimant had pressure sores and there was no evidence that the claimant was hospitalized. According to Dr. Levy it is not clear why the back cushion was prescribed. It is unclear how it would alter and improve the claimant's symptoms. The claimant should have continued the conservative treatment in the form of physical therapy, acupuncture treatment, and chiropractic treatment as it has proven benefits in pain management. Therefore, based on the article and the available medical records, the back cushion was not medically necessary.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find that the Respondent failed to meet its prima facie burden refuting the medical necessity for the general use cushion with the peer review by Dr. Levy. I say this because Dr. Levy's peer review does not address a standard of care for the use of such a device but discussed the effort being made to create or redesign the seat cushion so that some using such a cushion like the elderly, people with spinal cord injuries or with disabilities do not develop ulcers. Moreover, if it is not clear why the back cushion was prescribed, in rebuttal Dr. Hirsch reports that " *some patients need lumbar supports for temporary use in acute backache, or to stabilize 'weak' areas or to prevent back injury where there is exposure to strain.*" See the practical treatment of backache and sciatica by John Barrett, Douglas Noel Golding.

The Applicant is awarded its claim in the amount of $282.40.

Dry Pressure Mattress:

As for the dry pressure mattress, Dr. Levy notes that the claimant reported neck, bilateral shoulders, and lower back pain and was prescribed a dry pressure pad for a mattress but as per the article from Journal of Physical Therapy Science, Prevention of pressure ulcers with static air support surface: A systematic review, Brecht Serraes, et al 2017, it I noted the effectiveness of static air mattress overlays to prevent Pus. There are indications that these mattress overlays are more effective in preventing Pus compared with a standard mattress or a pressure-reducing foam mattress in nursing homes and intensive care settings. No studies reported significant differences in effectiveness, patient comfort, and purchase costs between a static air mattress overlay compared with high-technology mattress. Dr. Levy notes that the claimant was prescribed a dry pressure pad for a mattress. As per the above-cited article, no studies reported significant differences in effectiveness, patient comfort, and purchase costs between a static air mattress overlay compared with high-technology matters. The studies that have been done to test this do not give a clear answer. Also, there was no evidence that the claimant was hospitalized. The reason why the mattress was prescribed remains unclear. The claimant should have continued the physical therapy and chiropractic treatment as it has proven benefits in pain management. Therefore, the dry pressure pad for the mattress prescribed was not medically necessary.

Dr. Hirsch notes her disagreement with Dr. Levy's conclusion regarding the medical necessity for the foam mattress since preventing pus is not the only condition which warrants the need for mattress. The patient was prescribed a mattress as it allowed him to sleep comfortably. The proposed function of egg crate mattress is to improve circulation by distributing body weight evenly from head to toe. As a pressure-relieving device, the egg mattress facilitates relaxation of muscles, minimizes pain, and assists the individual to achieve maximum functional capacity in performing daily activities within a short span of time. The egg crate mattress was necessary to maintain integument integrity and to prevent skin breakdown by relieving pressure on bony prominences. There is some data pointing to the fact that firmness of the mattress promotes symptomatic pain relief in patients with lower back problems. Dr. Hirsch cites a 2002 article (Medical Surgical Nursing, an Integrated Approach, Lois White, Gena Duncan, 2002 Delmar) noting the fundamental objective is to help reduce pressure, reduce shear

and friction. The mattress pad increases air circulation and improves overall circulation in the body. A further study titled, "Effectiveness of a selected bedding system on quality of sleep, low back pain, shoulder pain, and spine stiffness." published in J Manipulative Physical Ther. 2002 authored by Jacobson BH, et al conclude by saying, " *Results suggest that subjects obtain significant improvement in shoulder and back pain, back stiffness, and quality of sleep after 28 days of prescribed bedding system use as compared with 28 days of personal bedding use*."

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find for the Respondent. Dr. Levy peer review set forth a factual basis and medical rationale for finding the dry pressure mattress medically unnecessary.Jacob Nir, M.D. v. Allstate Ins. Co., supra. According to Dr. Levy such mattresses are used for the prevention of pressure ulcers. The burden shifted back to the Applicant to present its own evidence of medical necessity. West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., supra.

Having reviewed the medical record of prescribing healthcare provider, I see no indication that the Assignor was bedridden or reported difficulty with sleeping. Based on a complete and thorough review of the record, and comparing the arguments made by each expert, I find as a matter of fact that the dry pressure mattress is not medically necessary.

Bed Board:

As for the bed board Dr. Levy cites to the article Beds and Mattresses United Healthcare Commercial Coverage Determination Guideline, 2022: "Hospital beds and accessories are proven and medically necessary in certain circumstances. The prescribing DME's physician documentation must include: • A signed physicians order for the enclosed bed • Behavioral Management Program, if applicable • Evaluation for contraindications to using of the equipment • Member assessment for physical, environmental, and behavioral factors • Name and model of protective or enclosure bed with a valid HCPCS code • Physician directed written monitoring plan • the medical, neurologic, or behavioral diagnosis." In this case, the claimant had neck, bilateral shoulders, and lower back pain and was prescribed a bed board. As per the records, there was no indication that the claimant needed a bed board. The documentation did substantiate the need for prescribing a bed board. The claimant should have continued the physical therapy and chiropractic treatment as it has proven benefits in pain management. Therefore, the bed board prescribed was not medically necessary.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find for the Applicant. Dr. Levy sets forth a standard of care based on the 2022 United Healthcare Commercial Coverage Determination Guideline. The guideline referred to is from United Health Care, a primary healthcare company that provides healthcare coverage for businesses, individuals, and families. Their guidelines are not considered proper peer reviewed authorities setting forth an acceptable standard of care within the medical community

and therefore, not controlling matters involving no-fault claims. I find that the Respondent failed to meet its prima facie burden refuting the medical necessity for the bed board with the peer review by Dr. Levy. Jacob Nir, M.D. v. Allstate Ins. Co., supra.

The Applicant is awarded $101.85.

Shoulder Vest Type (shoulder orthosis):

As for the shoulder orthosis, Dr. Levy cites IEEE; A new shoulder orthosis to dynamically support, glenohumeral subluxation, Claudia J. W. Haarman*, Edsko E. G. Hekman, Member, IEEE, Martijn F. H. Haalboom, Herman Vander Kooij, Member, IEEE, and Johan S. Rietman; 2017, "*However, the system is no longer a perfect gravity equilibrator, which means that the relative amount of weight compensation changes with the abduction angle. Additional effort is required to overcome the adducting moment caused by the bands. The assisting moment helps the patient to abduct his arm.*"

Dr. Levy goes on to say that in this case, "*The claimant was involved in the MVA dated 5/28/2022 and sustained an injury to the bilateral shoulders. The claimant was prescribed a shoulder orthosis for pain management. As per the article, insufficient evidence of effectiveness in preventing subluxation and pain; the potential for restricting shoulder range of movement; concern that elbow flexor spasticity may increase; and that discomfort and unpleasant odor discouraged many from using the orthoses and slings. Also, as per the available medical records, there was no document stating the treatment plan or plan of care and a time component for the use of shoulder orthosis. The claimant was actively engaged in conservative treatment. There was no documented evidence of a failure of the conservative treatment. The claimant should have continued the conservative treatment as it has proven benefits in pain management. Therefore, based on the above article and the available medical records, the shoulder orthosis provided was not medically necessary.*"

In rebuttal Dr. Hirsch notes that the patient was prescribed shoulder orthosis as the shoulder orthosis assist after injury in a variety of ways. These include supporting the shoulder as well as compression of surrounding skin and tissues. Dr. Hirsch notes that shoulder orthosis provides stability to the shoulder during movement to reduce discomfort. A shoulder orthosis provides upward pressure on the forearm/elbow for better alignment of the glenohumeral joint for functional healing of the capsular and ligamentous structures of the shoulder. Shoulder immobilizer for the glenohumeral joint (shoulder) uses a figure-eight design abduction restrainer, with a sling and swathe to keep the joint from further injury as it is healing. The swathe component readily attaches to the desired position of the sling & maintains GH (shoulder) joint in an internally rotated position. The shoulder is a highly mobile joint and its stability could be compromised as the patient had sustained trauma to the shoulder and the soft tissue structures of the shoulder were at risk of being injured. The recommended brace provided stability to the shoulder, prevented re-injury and enhanced healing. We speculate that the shoulder-stabilizing brace helps maintain anatomic position throughout a collision by limiting retraction of the shoulder, thus directing the collision force to the musculature of the shoulder. The brace resists forced posterior shoulder subluxation by allowing the shoulder musculature to absorb the force rather than the

labrum. Offensive linemen can wear the shoulder stabilizer comfortably during practices and games without affecting their playing ability. Most important, these braces limit retraction of the shoulder during collisions." (Posterior labral injury in contact athletes. Mair SD, Zarzour RH, Speer KP Am J Sports Med. 1998.). Buss et al found that athletes subjectively report improvement in shoulder stability while wearing a brace. (Nonoperative management for in-season athletes with anterior shoulder instability. Buss DD, Lynch GP, Meyer CP, Huber SM, Freehill MQ Am J Sports Med. 2004 Sep; 32(6):1430-3.). Shoulder support as it provides stability to the shoulder during movement to reduce discomfort. A shoulder orthosis provides upward pressure on the forearm/elbow for better alignment of the glenohumeral joint for functional healing of the capsular and ligamentous structures of the shoulder. Shoulder Immobilizer for the glenohumeral joint (shoulder) uses a figure-eight design abduction restrainer, with a sling and swathe to keep the joint from further injury as it is healing. The swathe component readily attaches to the desired position of the sling & maintains GH (shoulder) joint in an internally rotated position. This device is helpful in reducing discomfort and improving acute shoulder injury and loss of range of motion. Injury causes pain and disability in the shoulder. This device held up the shoulder while still allowing the range of motion needed. By letting the arm move, this aids in full recovery of a mild shoulder injury without loss of muscle use. Hence, it is needed for optimal arm health. "*In order to manage **shoulder instability** without surgical intervention, a combination of immobilization and **physical therapy** is often used before the patient can return to physical therapy protocols may either follow a period of immobilization of about 3 weeks in internal or external rotation of the shoulder or be initiated immediately. The overall goal of physical therapy is to progress through glenohumeral strengthening and stabilization, thus reducing the probability of recurrent **instability**. Return to full activity is mostly allowed when there is symmetrical shoulder strength of the scapulothoracic and glenohumeral joints, as well as functional shoulder range of motion.*" (Nonoperative treatment of five common shoulder injuries A critical analysis by Jonas Pogorzelski, M.D., M.H.B.A., Erik M. Fritz, M.D., Jonathan A. Godin, M.D., M.B.A., Andreas B. Imhoff, M.D., and Peter J. Millett, M.D., M.Sc. corresponding author, Published online 2018 Feb 19.).

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find in favor of the Respondent. As to this item, I have been presented with conflicting experts reports of doctors who have neither examined nor prescribed the device in issue. I've reviewed the medical report of the prescribing healthcare provider and it does not contains an complete examination of the Assignor's shoulders. It provides unspecified range of motion deficits and is absent any provocative orthopedic testing supporting evidence of instability. Moreover, the physical therapy notes that Dr. Levy reviewed fail to reveal any therapy directed to the shoulder.

Based on complete and thorough review of the record and considering the argument made by the parties, I find as matter of fact that the shoulder orthosis was not medically necessary.

The Applicant also submitted a bill in the amount of **$1,293.04** for providing the Assignor with a Form Fitted Conductive Garment, EMS Unit, Infrared Lamp, Massager, and Whirlpool Hydrotherapy on 6/29/22.

EMS Unit/Belt:

According to Dr. Levy, the claimant had complaints of neck, bilateral shoulders, and lower back pain and was prescribed an E.M.S unit with a belt. According to Dr. Levy J Am Acad Orthop Surg. 2017: The Role of Therapeutic Modalities in Surgical and Nonsurgical Management of Orthopaedic Injuries, Electrical Stimulation for Pain Modulation; Catherine A. Logan, MD, et al indicates that "… *Electrical stimulation for pain modulation is primarily used in the acute recovery phase of rehabilitation. The subsequent phases of rehabilitation incorporate electrical stimulation to strengthen targeted muscle groups.*" As per the medical records, there is no treatment plan regarding the use of the E.M.S unit. The reason why the E.M.S unit with a belt was prescribed was not understood. The claimant should have continued conservative treatment in the form of physical therapy, acupuncture treatment, and chiropractic treatment to resolve the pain as it has better outcomes. Therefore, based on the available medical records, the E.M.S unit with the belt provided was not medically necessary.

Dr. Levy asserts that electrical stimulation for pain is primarily used in the acute phase of recovery and that continued conservative treatment should have continued but provides no discussion establishing that an EMS device for home should not be used as part of the conservative treatment underway. The issue in dispute is the use of a home EMS device prescribed within 2 weeks of the accident. Although Dr. Levy is of the opinion that the claimant should have continued with conservative care to resolve the pain as it has better outcomes the peer report does not set forth a factual basis and medical rationale for finding the prescription of an EMS device for home use was a deviation from an acceptable medical standard of care since it fails to include a standard of care as to when a home device would be considered medically necessary. As such I find that Dr. Levy's peer review insufficient to support Respondent defense that the EMS and conductive garment are medically unnecessary.

The Applicant is awarded $360.04.

Massager,

As per the massager Dr, Levy cites an article from the American massage therapy association, Massage Therapy Journal, Promising Approaches to Pain Relief Making Choices: Massage + Pain Management Research, by Michelle Vallet, 2019 noting " *Several randomized controlled trials and prospective studies indicate that massage therapy has positive results with respect to osteoarthritis and rheumatoid arthritis, including less pain and stiffness, and enhanced function. One randomized controlled study found that participants who received an eight-week massage therapy intervention for symptoms associated with osteoarthritis of the knee had significant improvements*

compared to those who received usual care. Another similar study found that a one-hour course of massage therapy given for eight weeks provided better pain relief than usual medical care."

Dr. Levy further cites the article Massage Guide: Some Warnings Regarding Use of Vibration Massage Therapy 2019 noting avibration massage may not be appropriate in all cases of injuries and pains because of the intensity of these therapies. Too high intensity could be dangerous and may worsen conditions. Some cases and conditions where vibration massage should not be used without taking advice from your doctor include lumbar injuries, cardiovascular diseases pregnancy, advance level of diabetes, chronic back pains, or injuries or if you are taking medicines that thin the blood.

The claimant herein sustained injuries to the neck, bilateral shoulders, and lower back and was prescribed a massager. Based on the available medical records and the cited authority Dr. Levy reports that there is a lack of documentation substantiating that the claimant had osteoarthritis. The documents indicating the need for a massager were not provided. In addition, it is asserted that vibration massage therapy may not be an appropriate solution in all cases of injuries and pain because of the intensity of these therapies. The claimant should have continued with the conservative treatment in the form of physical therapy, acupuncture treatment, and chiropractic treatment for pain management as it has clinically proven benefits. Therefore, based on the above article, the massager provided to the claimant was not medically necessary. Per the above article, "*One randomized controlled study found that participants who received an eight-week massage therapy intervention for symptoms associated with osteoarthritis of the knee had significant improvements compared to those who received usual care.*"

As to the massager, Dr. Hirsch notes that it has been clinically proven to reduce stress and relieve muscle tension and stiffness. It can also increase blood flow to skin's surface, reducing blood pressure and speeding the repair of damaged tissue. The massager provides soothing effects and aids in pain relief by improving circulation and removing the waste metabolites/pain substances. This, in turn, reduces muscle spasm, which is evident in this case. Massager alleviates pain, relieves stress, and improves the health and well-being of the patient by bringing movement to the soft tissue, including skin, muscles, tendons, ligaments, and connective tissue. Massager indeed provides significant benefit with reduction of pain and recovery time. Therefore, it facilitates management of the healing process both at home and within the facility. It is prescribed routinely in acute and chronic stages of treatments.

In a study titled 'Massage for low back pain: an updated systematic review within the framework of the Cochrane Back Review Group.' Published in Spine (Phila Pa 1976). 2009 Jul 15;34(16):1669-84., authored by Furlan AD, Imamura M, Dryden T, Irvin E. concludes with "*Massage might be beneficial for patients with* ***subacute and chronic nonspecific low back pain****, especially when combined with exercises and education.*"

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I find Dr. Hirsch's peer review rebuttal more persuasive as to the medical necessity for the massager.

As such I find for the Applicant in the amount of 295.00.

Infrared Lamp:

As for the infrared heat lamp Dr. Levy cites to the AAOS, Literature Offers Little Direction on the Safety and Efficacy of Low-level Laser Therapy for Back Pain, Eric Truumees, MD Published 2019 noting "*There are insufficient data to either support or refute the effectiveness of LLLT for the treatment of LBP*." Some therapies qualify for insurance reimbursement with Current Procedural Terminology code 97026 (infrared therapy). When treatments are performed by licensed practitioners, payments can utilize health savings accounts. Dr. Levy states that the claimant was prescribed with infrared heat lamp but as per the cited article, there is insufficient data to either support or refute the effectiveness of LLLT for the treatment of LBP. Also, as per the medical records, there was no documentation suggesting the indications for this device. The claimant should have continued with the conservative treatment in the form of physical therapy, acupuncture treatment, and chiropractic treatment for pain management as it has clinically proven benefits. There was no treatment plan regarding the use of this device. Therefore, based on the above-cited article and the available medical records, the infrared lamp prescribed to the claimant was not medically necessary.

As to the infrared lamp, Dr. Hirsch reports that it was prescribed to helps speed up circulation and as the far-infrared energy is much more readily absorbed, it gradually relaxes the muscle in spasm and relieves pain. Usually, muscle exercises performed during physical therapy sessions are preceded by use of warm therapy in various forms including hot packs, heating pads, warm whirlpool use, infrared treatment, etc. the purpose is to increase blood flow to the tissues to help deliver oxygen and thus loosen the patient's muscles, relieve spasm, alleviate pain, and discomfort and generally make the patient more comfortable and less stiff. As a result, the musculo-ligamentous complex heals faster and in a more efficient manner. This case of musculoskeletal injury meets the criteria for the use of this device, so the patient will be able to stretch, bend and move about with more ease due to less pain and discomfort. This helps during outpatient therapy so that the patient can perform the necessary treatments and helps in the outpatient setting so that the patient can do these exercises at home, on their own, as well as perform their regular activities of daily living so as to return to normal lifestyle. This mechanism facilitates the treatment goal of early mobilization for neck and back pain sufferers. Dr. Hirsch reports that literature supports heat treatment alone and in combination with other modalities of physical therapy. The patient was prescribed infrared heat lamp as it provides a therapeutic benefit such as increased safety, delivery of specific temperature and contour to the treatment site. It provides palliative care by improved circulation with the local heat and by the counter irritant effect. After the initial simple instructions, the patient can use the heating device safely at home since any potential side effects are extremely rare and do not affect patients beyond routine erythema. Heating devices are no more dangerous than everyday sun exposure. The infrared heating lamp provides penetration in the deep tissues due to which the innermost paraspinal muscles get heat therapy. Infrared lamps provide heat penetration of up to 5 cm in comparison to moist heat modalities which provide heat penetration of 2-3 mm. Using a far-infrared heating pad for about 30 minutes can give up to 6 hours of back pain relief without any medication. Plus, the deep penetrating infrared rays do not

only relieve pain, but they also actually increase blood circulation in the muscles and help the body heal the injured area faster. Dr. Hirsch cites to A randomized, controlled trial conducted to assess the degree of pain relief obtained by applying infrared (IR) energy to the low back in patients with chronic, intractable low back pain. The IR therapy unit used was demonstrated to be effective in reducing chronic low back pain, and no adverse effects were observed. See Infrared therapy for chronic low back pain: A randomized, controlled trial GD Gale, PJ Rothbart, Y Li The Journal of the Canadian Pain Society, 2006.

Whirlpool Hydrotherapy:

Dr. Levy further cites J Am Acad Orthop Surg. 2017: The Role of Therapeutic Modalities in Surgical and Nonsurgical Management of Orthopaedic Injuries: Catherine A. Logan, MD, MBA, PT; Peter D. Asnis, MD; Matthew T. Provencher, MD, noting that most recommendations for the use of cold therapy are based on anecdotal experience, with limited scientific evidence to support the efficacy of specific cold modalities. Thermotherapy refers to heating modalities that increase tissue temperature for a variety of therapeutic goals. The assorted media are categorized by the mode of heat transfer: conduction (hot packs and paraffin baths), convection (dry heat therapy and hydrotherapy), and radiation (ultrasonography, microwave diathermy, and infrared radiation). The effects of heat and cold therapy in adults with low back pain concluded that the evidence to support the use of heat or cold for the management of low back pain is limited and that higher-quality randomized controlled trials are needed.

Dr. Levy notes that the claimant was prescribed Whirlpool therapy for pain management. As per the article, the effects of heat and cold therapy in adults with low back pain concluded that the evidence to support the use of heat or cold for the management of lower back pain is limited and that higher-quality randomized controlled trials are needed. In addition, as per the medical records, there was no documentation suggesting the indications of this device. There was no treatment plan regarding the use of this device. Further, the claimant was actively engaged in conservative treatment. There was no documented evidence of a failure of the conservative treatment. The claimant should have continued the conservative treatment as it has proven benefits in pain management. Therefore, the whirlpool hydrotherapy provided to the claimant was not medically necessary.

Regarding the whirlpool, Dr. Hirsch asserts that the use of whirlpool as a form treatment should be left to the discretion of the treating physician as long as it works for the patient's aim to reduce his complaints; does not result in any side effects and is safe for the patient to use. The patient was recommended whirlpool as the whirlpool suppresses pain, decreases muscle spasm, improves vascular circulation, and helps increase patient's overall treatment compliance. As the body weight is reduced while in water, the patient can perform range of motion exercises efficiently and in a pain free manner. Continued supportive care at home through the whirlpool reduces tension in the muscles and upholds the ability to stimulate circulation, increase flexibility and range of motion in tandem of promoting overall healing and pain reduction. I am recommending whirlpool

unit as it can help the patient in relief from pain and achieving independence in activities of daily living. Further it will provide palliative care to this patient due to its turbulence and buoyancy effect.

Whirlpool in general has very low potential for any dangerous or unwanted side effects. There are many publications including retrospective randomized studies showing statistically significant benefits of various heat treatments. Literature supports heat treatment alone and in combination with other modalities of physical therapy. After the initial simple instructions, the patient can use this device safely at home since any potential side effects are extremely rare. Dr. Hirsch cites to Hydrotherapy in the Management of Sprains, Strains and Muscular Spasms. According to Elizabeth B. Howland, R.N., former supervisor of physical therapy for Freedman's Hospital of Washington, D.C., in the "Journal of the National Medical Association," whirlpool therapy using hot water is an efficient and practical way to encourage the healing of sprains, strains, and muscle spasms. The heat and swirling motion of the water promotes circulation to your affected area. In addition, if you are recovering from a fractured bone, whirlpool therapy can improve stiffness, pain, and encourage circulation near the skin of your injury.

The Applicant also submitted a bill in the amount of **$485.89** for providing the Assignor with a water circulating heat pad with pump on 6/29/22.

Water Circulating Heat Pad with Pump:

According to Dr. Levy as per The American journal of Orthopedics, 2018, The Cold, Hard Facts of Cryotherapy in Orthopedics, (Elizabeth G. Matzkin, MD), reached a conclusion "Despite their armamentarium of advanced treatment modalities, physicians in the modern era continue to prescribe cryotherapy for their patients, particularly in the field of orthopedics. Most athletes know the "RICE" (Rest, Ice, Compression, Elevation) protocol and utilize it to minimize inflammation associated with soft tissue injuries.

In this case, the claimant was prescribed cold compression therapy for pain management but as per the cited article, despite their armamentarium of advanced treatment modalities, physicians in the modern era continue to prescribe cryotherapy for their patients, particularly in the field of orthopedics. Most athletes know the "RICE" (Rest, Ice, Compression, Elevation) protocol and utilize it to minimize inflammation associated with soft tissue injuries. The medical records establish that the claimant was already engaged in conservative care in the form of physical therapy and chiropractic treatment. There was no evidence that the claimant's symptoms were worsening, or the conservative care was contra-indicated. The claimant should have continued receiving noninvasive conservative care in the form of physical therapy, chiropractic treatment, and acupuncture treatment for better clinical outcomes. Therefore, based on the available medical records, the water circulating heat pad with the pump provided was not medically necessary.

Dr. Hirsch indicates that the patient was prescribed water circulating cold/heat pad with pump as hot water therapy aqua-relief system is an automatic hot/cold therapy system that delivers instant heat through patented wraps that go around your feet and hands to

provide greater circulation and reduce pain. The mechanism by which heating device helps patients while they attend to their daily activities is synergistic to the physical therapy, they receive in the office several times a week. This creates additional benefits and speeds up the recovery process. Water circulation heat pad, specifically, and heat therapy in general has very low potential for any dangerous or unwanted side effects. There are no reports of any bad outcomes after use of heat therapy in the literature. There are many publications including retrospective randomized studies showing statistically significant benefits of various heat treatments. Literature supports heat treatment alone and in combination with other modalities of physical therapy. After the initial simple instructions, the patient can use heating device safely at home since any potential side effects are extremely rare. Continuous use of a water circulating unit at home will reduce muscle spasms, tissue damage and stimulate the circulation. Increased local circulation will wash out the metabolic products and thus help to relieve pain and associated spasm and promotes healing. The water circulating heat pad with pump provides a therapeutic benefit that is not achieved solely by using a standard electric heat pad, such as increased safety, delivery of a specific temperature, and contour to treatment site. The prescribed device by continuous circulation of water will enhance the healing process in a holistic manner and thus will help in enhancing the recovery process and render palliative care. In support Dr. Hirsch cites Continuous low-level heat wrap therapy for treating acute nonspecific low back pain. Nadler SF; et al Archives of Physical Medicine and Rehabilitation. 2003.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I am more persuaded by the peer review opinion of Dr. Levy that the infrared lamp, whirlpool hydrotherapy, and water circulating heat pad with pump were not medically necessary. According to Dr. Levy, the patient was already engaged in in conservative treatment and despite the use of cryotherapy or heat therapy the conservative care being provided would have been sufficient to minimize inflammation and pain associated with soft tissue injuries sustained. According to Dr. Hirsch that physical therapy sessions are usually preceded by warming therapy in various forms including hot packs, warm whirlpool, or infrared treatment. Dr. Hirsch's overriding argument in support of the infrared lamp, whirlpool hydrotherapy, and water circulating is that the benefit they provide is viewed as working together with physical therapy in the preparation of the patient for the therapy. Arguably, these devices loosen the patient's muscles and generally make the patient more comfortable and less stiff and therefore more able to participate in therapy. Additionally, Dr. Hirsch notes the use of devices for chronic, intractable low back pain but there is no evidence that the Assignor was suffering from chronic, intractable low back pain when the supplies were prescribed. Comparing the evidence provided by the parties against each other and having reviewed the initial evaluation report of the prescribing healthcare provider two weeks after the accident, I find as a matter of fact that the infrared lamp, whirlpool hydrotherapy, and water circulating heat pad with pump are not medically necessary.

As indicated above, in this matter I am presented with conflicting opinions regarding the medical necessity of the supplies in issue. Having thoroughly reviewed the medical record of the treating healthcare provider as well as the peer review and rebuttal, I find with regards to the cervical collar, dry pressure mattress, should orthosis infrared lamp,

whirlpool hydrotherapy and the water circulating heat pad with pump that Dr. Levy presented a medical rationale and factual basis for his conclusion that these supplies were not medically necessary and that the rebuttal failed to refute Dr. Levy's arguments. Where a peer review provides a factual basis and medical rationale for the reviewer's opinion that a service is not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied. Delta Diagnostic Radiology, P.C. v. Progressive Casualty Ins. Co., 21 Misc.3d 142(A), 880 N.Y.S.2d 223, 2008 NY Slip Op. 50208 (U) (App. Term 2d & 11th Dist. Feb. 9, 2009). As to the lumbar-sacral orthosis, general use cushion, bed board, EMS and conductive garment and massager I find Dr. Levy' peer review insufficient to establish that the supplies were medically unnecessary or that the rebuttal was sufficient to overcome the peer review arguments. As such I find that the Applicant's prima facie case for reimbursement of these supplies in the amount of $1,786.47.

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**	**Amount Amended**	**Status**
	UO Medical Supplies Corp	**06/29/22 - 06/29/22**	**$1,537.79**	**$1,547.09**	**Awarded: $1,144.17**
	UO Medical	**06/29/22 -**			**Awarded:**

	Supplies Corp	**06/29/22**	**$1,293.04**	**$1,293.04**	**$642.30**
	UO Medical Supplies Corp	**06/29/22 - 06/29/22**	**$485.89**		**Denied**
Total			**$3,316.72**		**Awarded: $1,786.47**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/13/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall pay interest at a rate of 2% per month, calculated on a pro rata basis using 30-day month and in compliance with 11 NYCRR §65-3.9. Interest shall begin to accrue from the date of filing with the American Arbitration Association and end on the date the award is paid.

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of $850." Id. The minimum attorney fee that shall be awarded is $60. 11 NYCRR §65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR §65-4.6 (i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of $1,360." 11 NYCRR 65-4.6(d).

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 Suffolk

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

11/15/2023
(Dated)

Frank Marotta

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:
c6769ff428ca7144bf9d9857944be470

Electronically Signed

Your name: Frank Marotta
Signed on: 11/15/2023