American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

EM Medical Supplies Corp. (Applicant)	AAA Case No.	17-22-1272-4795
	Applicant's File No.	94354
- and -	Insurer's Claim File No.	0496673380004
	NAIC No.	26042
Wausau Underwriters 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-IJ

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

   Lowell Handschu, Esq. from Wausau Underwriters Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$4,833.28**, was NOT AMENDED at the oral hearing.
   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, and the Respondent timely denied the claim(s) in question.

3. Summary of Issues in Dispute

   The record reveals that the Assignor-IJ, a 29-year-old-male, sustained injuries in a motor vehicle accident on 5/31/22.

   The Applicant seeks reimbursement for medical supplies provided to the Assignor on 7/7/22 and 8/18/22.

The Respondent denied reimbursement based on peer reviews by Dr. Stuart Springer dated 8/29/22 and 9/26/22.

The issue is the medical necessity for the 12 items of medical supplies dispensed to the Assignor on 7/7/22 and 8/18/22.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of $4,833.28 for disputed fees in connection with medical supplies provided to the Assignor on 7/7/22 and 8/18/22.

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.

DOS: 7/7/22

The Applicant submits a bill in the amount of $1,418.69 for providing the Assignor with a Positioning Cushion/Pillow, Cervical Multiple Post, Lumbar Sacral Orthosis, general use wheelchair cushion, Bed Board, Dry Pressure Mattress on 7/7/22.

On 8/31/22 the Respondent reimbursed the Applicant for the cervical pillow but denied the remaining supplies as medically unnecessary based on a peer review by Dr. Stuart Springer 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. Springer provides a history of the Assignor as a 29-year-old male, who was involved in a motor vehicle accident on 5/31/22, as a restrained front-seat passenger sustaining injuries to the neck, right shoulder, mid-back, and lower back. Following the accident, the claimant was evaluated, treated, and released from the emergency room of a local hospital.

As per the evaluation report dated 6/23/22 by Gordon Davis, M.D., the claimant had complaints of neck, right shoulder, mid-back, and lower back pain rated as 8-9/10 on the pain scale. The overall pain was constant and sharp in nature. The overall pain was

aggravated by daily living activities. Examination of the cervical spine revealed muscle spasms. Trigger points were noted. The range of motion was decreased. The Shoulder Depression and Soto Hall tests were positive. Examination of the lumbar spine revealed decreased range of motion. Kemp's test was positive. The diagnoses were a cervical strain, stiffness in the joint shoulder, thoracic pain dysfunction, and lumbar sprain. The claimant was recommended chiropractic treatment. With a prescription dated 6/23/22 by Gordon Davis, M.D., the Assignor was prescribed a cervical pillow, cervical collar, lumbar-sacral orthosis, general use back cushion, bed board, and dry pressure mattress.

As per the initial chiropractic evaluation report dated 6/23/22 from Gordon C. Davis Medical, P.C., the claimant was recommended chiropractic treatment. The claimant received chiropractic treatment from 6/23/2022 to 7/7/2022 in a total of 3 sessions for the cervical spine, thoracic spine, and lumbar spine. The reports were made available for my review. The claimant received physical therapy from 6/23/2022 to 7/7/2022 in a total of 3 sessions for the cervical spine, thoracic spine, and lumbar spine. The reports were made available for my review.

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).

In support of its claim the Applicant submits peer review rebuttal to Dr. Springer's 8/29/22 peer review by Dr. Drora Hirsch dated 1/25/23.

Dr. Hirsch highlights the fact that the medical necessity of the cervical pillow, cervical collar, LSO, general use back cushion bed board and mattress foam rubber provided to patient on 7/7/2022 by EM Medical Supplies, Corp., was denied pursuant to the peer review performed by Dr. Springer on 8/29/2022. Dr. Hirsch reports that the Assignor is a 29-year-old male was a restrained front-seat passenger of a vehicle involved in a motor vehicle accident on 5/31/22 resulting in injuries to his neck, right shoulder, mid back, and low back. The patient went to Methodist Hospital, where he was evaluated, treated, and released. The patient started on a course of conservative treatment. Dr. Hirsch reports that the patient presented for an examination on 6/23/22 with complaints of neck pain, lower back pain and right shoulder pain. The pain was rated at 5/10. The pain was exacerbated going up and down stairs, carrying heavy objects, lying down, prolonged sitting, walking, and pulling. The patient did not have similar complaints before the

accident. Examination of the right shoulder revealed decreased range of motion. Impingement Sign was positive. Examination of the cervical spine revealed mild tenderness in the upper trapezius and paraspinal muscle bilaterally. Range of motion the cervical spine was decreased. Examination of the lumbar spine revealed point tenderness in the paralumbar area. Range of motion of the lumbar spine was decreased. Manual muscle testing revealed decreased muscle strength in the right shoulder. Diagnosis was neck, back and right shoulder strain. The patient was recommended physical therapy, neurology consultation, chiropractic consultation, MRIs and follow up. The patient was prescribed medical supplies for home use.

Dr. Springer's 8/29/22 peer review begins by noting that "*As per the standard of care, durable medical equipment is standard equipment that normally is used in an institutional setting, can withstand repeated use, is primarily and customarily used to serve a medical purpose, and generally is not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.*"

Cervical Multiple Post/Collar:

As to the cervical collar, Dr. Springer cites an article from Neck Pain: Revision 2017 Clinical Practice Guidelines Linked to the International Classification of Functioning, Disability and Health From the Orthopaedic Section of the American Physical Therapy Association, Roy D. Altman, MD et al, noting for patients with acute neck pain with movement coordination impairments (including WAD) it is recommended that clinicians should 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.

Dr. Springer goes on to say that in this clinical setting, the claimant sustained an injury to the neck and was prescribed a cervical collar. Clinicians should follow the standard set out on the cited authority by educating the patient to return to normal, non-provocative pre-accident activities as soon as possible, minimize use of a cervical collar, and perform postural and mobility exercises to decrease pain and increase range of motion. This indicated that exercise may be more beneficial for reducing pain. The claimant was already receiving conservative treatment in the form of physical therapy and chiropractic treatment. There was no documentation regarding the failure of the provided conservative treatment. Conservative treatment would have been enough for the complete resolution of the symptoms. Hence, based on the available medical records and the above-cited article, the cervical collar provided to the claimant was not medically necessary.

As to the cervical collar, Dr. Hirsch notes her disagreement with Dr. Springer's conclusion that the cervical collar was not medically necessary as exercise may be more beneficial for reducing pain since the medical literature supports the efficacy of prescribed supplies in the treatment of neck pain and lower back pain. Dr. Hirsch reports that 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 is 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. According to Dr. Hirsch medical literature supports the efficacy of this item in treatment. 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.*" See also AAOS Atlas of Orthosis and Assistive Devices, John D. Hsu, John W. Michael, John R. Fisk, Mosby Elsevier, 2008. 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.

Considering the initial report of the prescribing healthcare provider, I am persuaded by the opinion of Dr. Springer, 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. Springer 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:

As for the lumbar sacral orthosis Dr. Springer refers to Distractive & Mobility-Enabling Lumbar Spinal Orthosis, Denis J. Do Angelo, et al 2016 noting that more recently, dynamic LSOs have been developed to provide relief from pinched nerves or disc or spinal cord compression. These devices claim to axially decompress the spine but lack clinical or experimental evidence to support their efficacy. 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. Such a device would well serve individuals suffering from disc degeneration, recovering from an injury, limited by weakness, and the elderly with several degenerative conditions.

The claimant was prescribed lumbar-sacral support. As per the above-cited article, 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. Such a device would well serve individuals suffering from disc degeneration, recovering from an injury, limited by weakness, and the elderly with several degenerative conditions. The claimant was receiving physical therapy and chiropractic treatment for the lower back. In this case, the severity of lower back pain was moderate. Physical therapy and chiropractic treatment were enough for the resolution of the lower back pain. The claimant should have continued the physical therapy as it has clinically proven benefits in pain management. Hence, based on the above-cited article, the lumbosacral support provided 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. Springer. I read the material cited by Dr. Springer and find it discusses a specific type of LSO, noted by Dr. Springer 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 is the type discussed in the cited material. Therefore, I find Dr. Springer'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:

Regarding the general use cushion Dr. Springer notes that as per the Modelling, design, and control of a new seat-cushion for pressure ulcers prevention, 2022, Daniele Mannella, et al, "*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." The claimant was prescribed a general back cushion for pain management. As per the article, 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. Also, there was no evidence that the claimant was hospitalized. It was not clear why the general 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 and chiropractic treatment as it has proven benefits in pain management. Hence, based on the article and the available medical records, the general 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. Springer. I say this because Dr. Springer'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.

Bed Board:

Regarding the bed board, Dr. Springer notes that as per the article Beds and Mattresses; United Healthcare Commercial Coverage Determination Guideline, February 1, 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.*" The claimant 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. In this case, the claimant's symptoms were improving and there was no need for the use of this device. The claimant should have continued the physical therapy and chiropractic treatment as it has proven benefits in pain management. Hence, 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. Springer 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. Springer. Jacob Nir, M.D. v. Allstate Ins. Co., supra.

The Applicant is awarded its claim in the amount of $101.85.

Dry Pressure Mattress:

As for the dry pressure mattress Dr. Springer refers to the article from Journal of Physical Therapy Science, Prevention of pressure ulcers with static air support surface: A systematic review, Brecht Serraes, et al 2022 noting a focus on 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. The claimant was prescribed a dry pressure 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. Hence, the dry pressure mattress prescribed was not medically necessary.

Dr. Hirsch disagrees with Dr. Springer's conclusion that the dry pressure pad for the mattress was not medically necessary since preventing pus is not the only condition which warrants the need for the mattress. According to Dr. Hirsch, the patient was prescribed a mattress as it allowed him to sleep comfortably. The proposed function of 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. See 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. [Medical Surgical Nursing, an Integrated Approach, Lois White, Gena Duncan, 2002

Delmar]. Moreover, in the 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, Gemmell et al the authors concluded "*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. Springer 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. Springer 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.

DOS: 8/18/22

The Applicant submitted bills in the amount of $1,150.00 for a lumbar-sacral orthosis, $502.63 for a cervical traction unit and $865.04 for providing the Assignor with a form fitted conductive garment, EMS unit, infrared lamp, and massager all on 8/18/22.

On 9/28/22 the Respondent denied all three bills based on a peer review performed by Stuart I. Springer, M.D. on 9/26/22. Dr. Spinger provides a similar history as his 8/29/22 peer review and goes on to note that the MRI report of the cervical spine dated 7/26/22, revealed: C5-C6 disc herniation deforming the thecal sac. C3-C4, C4-C5, and C6-C7 disc bulges. Cervical spine straightening. The MRI report of the lumbar spine dated 7/26/22, revealed: L5-S1 disc herniation deforming the anterior epidural fat abutting the proximal S1 nerve roots bilaterally with bilateral neural foraminal extension abutting the exiting L5 nerve roots. L4-L5 disc herniation deforming the thecal sac abutting the proximal L5 nerve roots bilaterally, left greater than right, with bilateral neural foraminal extension abutting the exiting L4 nerve roots. L3-L4 disc bulges with bilateral proximal neural foraminal extension.

In support of its claim the Applicant submits peer review rebuttal to Dr. Springer's 9/26/22 as to the medical necessity of the form fitting conductive garment, EMS unit, heat lamp with stand, massager, LSO-sagittal, cervical traction equipment, and shoulder orthosis provided to patient on 8/18/2022 by EM Medical Supplies, Corp. by Dr. Drora Hirsch also dated 1/25/23. Dr. Hirsch reports that the Assignor is a 29-year-old male was a restrained front-seat passenger of a vehicle involved in a motor vehicle accident on 5/31/22 resulting in injuries to his neck, right shoulder, mid back, and low back. The patient went to Methodist Hospital, where he was evaluated, treated, and released. The patient started on a course of conservative treatment. Dr. Hirsch again reports on the healthcare providers examination of the Assignor on 6/23/22.

Lumbar-Sacral Orthosis (8/18/22):

As for the lumbar sacral orthosis Dr. Springer refers to Distractive & Mobility-Enabling Lumbar Spinal Orthosis, Denis J. Do Angelo, et al 2016 noting that more recently, dynamic LSOs have been developed to provide relief from pinched nerves or disc or spinal cord compression. These devices claim to axially decompress the spine but lack clinical or experimental evidence to support their efficacy. 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. Such a device would well serve individuals suffering from disc degeneration, recovering from an injury, limited by weakness, and the elderly with several degenerative conditions. The claimant was prescribed lumbar-sacral support. As per the above-cited article, 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. Such a device would well serve individuals suffering from disc degeneration, recovering from an injury, limited by weakness, and the elderly with several degenerative conditions. The claimant was receiving physical therapy and chiropractic treatment for the lower back. In this case, the severity of lower back pain was moderate. Physical therapy and chiropractic treatment were enough for the resolution of the lower back pain. The claimant should have continued the physical therapy as it has clinically proven benefits in pain management. Hence, based on the above-cited article, the lumbosacral support provided 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 again find that the Respondent failed to meet its prima facie burden refuting the medical necessity for the LSO with the 9/26/22 peer review by Dr. Springer. I read the material cited by Dr. Springer and find it discusses a specific type of LSO, noted by Dr. Springer 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 is the type discussed in the cited material. Dr. Springer continues to discuss lumbar support in their general sense noting many exist for treating lower back problems. I find Dr. Springer'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 above notwithstanding, Dr. Hirsch does indicate in her rebuttal contrary evidence and authority noting that lumbar supports are used in the treatment of low back pain patients to make the impairment and disability vanish or decrease, used to prevent the onset of low back pain as primary prevention or to prevent recurrences of a low back pain episode as a secondary prevention. See Cochrane Database System Rev. 2007

As sch, I find for the Applicant in the amount of $1,150.00.

Cervical Traction Unit:

As for the cervical traction unit Dr. Springer cites to the Journal of Orthopaedic & Sports Physical Therapy, Published Online: 2017, Volume 47 Issue 3, Pages 200-208 by

Timothy Madson, et al, Cervical Traction for Managing Neck Pain: A Survey of Physical Therapists in the United States noting, "*Systematic reviews of cervical traction provide inconclusive evidence for its efficacy. Limited evidence suggests that a subset of patients with neck pain may respond positively. Conclusion: systematic reviews provide limited support for spinal traction in managing neck pain.*"

Dr. Hirsch notes her disagreement with Dr. Springer's conclusion that the cervical traction was not medically necessary as systemic reviews of cervical traction provide inconclusive evidence for its efficacy since there is no authoritative literature to support his conclusion.

Dr. Spinger notes that the claimant was prescribed cervical traction equipment for pain management, based on the article, systematic reviews of cervical traction provide inconclusive evidence for its efficacy. Limited evidence suggests that a subset of patients with neck pain may respond positively. Also, systematic reviews provide limited support for spinal traction in managing neck pain. Also, as per the available medical records, the claimant was receiving conservative treatment in the form of physical therapy and chiropractic treatment. There was no evidence of a failure of the conservative treatment. The claimant should have continued with physical therapy, acupuncture treatment, and chiropractic treatment as it has proven benefits. Hence, the cervical traction equipment was not medically necessary.

Dr. Hirsch maintains that cervical traction has been proved in the literature to improve overall outcomes in the treatment of post-traumatic musculoskeletal injuries related to the neck. According to "Therapeutic Exercise: Foundations and Techniques," by Carolyn Kisner and Lynn Allen Colby, cervical traction can help flatten and relieve disc bulges, relax muscles, mobilize the vertebral facet joints, and reduce pain. Dr. Hirsch goes on to cite a 2011 home-based mechanical cervical traction. According to Dr. Hirsch home traction has long been recognized as an effective form of conservative treatment and has been used as a form of physical therapy for neck pain caused by soft tissue injuries from whiplash type injuries. As such the cervical traction unit was therefore medically necessary in the management of the patient's complaints, providing a temporary relief of pain.

After a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, there is sufficient proof to support the medical necessity for the cervical traction unit as medically necessary.

As sch, I find for the Applicant in the amount of $502.63.

Right Shoulder Orthosis:

Regarding the shoulder orthosis Dr. Springer cites to the International Society for Prosthetics and Orthotics, A newly designed shoulder orthosis for patients: a clinical evaluation study Reinout O. van Vliet, 2021 noting the simplest orthoses are slings, which consist of an arm tray and a strap wrapped around the neck. Slings are easy to use, but several studies show variable results and disadvantages.

In this case, the claimant sustained an injury to the right shoulder. The claimant was prescribed a shoulder orthosis for pain management. As per the article, the simplest orthoses are slings, which consist of an arm tray and a strap wrapped around the neck. Slings are easy to use, but several studies show variable results and disadvantages. 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 reason why shoulder orthosis was prescribed was unclear. The claimant should have received adequate conservative treatment as it has proven benefits in pain management as there was no documentation suggesting of the indications of this device. Hence, based on the above article and the available medical records, the right shoulder orthosis provided for pain management was not medically necessary.

Dr. Hirsch disagrees with Dr. Springer's conclusion that the shoulder orthosis was not medically necessary as the simplest orthoses are slings, which consist of an arm tray and a strap wrapped around the neck, slings are easy to use, but several studies show variable results and disadvantages since 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 prescription of durable medical equipment is appropriate. A guideline is not an absolute. It is intended to help the clinician make decisions regarding care based on all of the information presented to him for each patient. The patient was prescribed shoulder orthosis as the shoulder orthosis assist after injury in variety of ways. These include supporting the shoulder as well as compression of surrounding skin and tissues. 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.

Dr. Hirsch notes 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, et al Am J Sports Med).

Dr. Hirsch goes on to say that 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.).

Dr. Hirsch concludes noting "*I would like to mention that the use of external support/devices is considered an important adjunct in treatment of musculoskeletal disorders and they are recommended in conjunction with other conservative treatment modalities. 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. Additionally, these supplies provided palliative care to the patient, which offers temporary relief from pain. Any supplies that can ease the patient's pain are medically necessary and warranted.*"

After considering the arguments for and against the medical necessity for the shoulder orthosis, I am more persuaded by the Dr. Springer's position that it was medically unnecessary. Dr. Hirsch peer review rebuttal discusses raises the need for an orthosis to manage shoulder instability or to be used in conjunction with treatment of musculoskeletal disorders, however, there is no discussion in the record, nor does Dr. Hirsch cite to any findings suggestive of a shoulder instability. Additionally, there is no evidence that the Assignor was in active treatment for complaints involving the shoulder. As indicated by Dr. Springer, the physical therapy records only document treatment directed to the Assignor's spine.

As such, I find based on the facts, that the shoulder orthosis was not medically necessary.

EMS Unit/Form Fitted Conductive Garment:

With respect to the EMS and form fitted garment Dr. Spinger refers to the 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, MBA, PT; et al noting electrical stimulation can be delivered via an implant but is more commonly administered in the clinical setting externally via transcutaneous electrodes placed over specific treatment areas. The body serves as a conductor and allows current to flow between the electrodes, accessing the peripheral nerves and muscles. Several electrical stimulation treatment parameters may uniquely address different impairments. The electrophysiologic effects vary depending on the type of current applied and its dosage. 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.

The claimant was prescribed with an E.M.S unit with 4 leads and a form-fitting conductive garment. As per the above article, the electrophysiological effects vary depending on the type of current applied and its dosage. 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 was no treatment plan regarding the use of the E.M.S unit. The reason why the E.M.S unit was prescribed was not understood. The claimant was already engaged in conservative treatment for the spine in the form of physical therapy and chiropractic treatment. There was no evidence that conservative treatment failed in pain management. The claimant should have started with a course of conservative treatment for the right shoulder. The claimant should have been treated with adequate conservative treatment as it is clinically proven benefits in pain management. Hence, based on the available medical records, the E.M.S unit with 4 leads and form-fitting conductive garment provided to the claimant were not medically necessary.

Dr. Springer 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 one month of the accident. Although Dr. Springer 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. Springer's peer review insufficient to support Respondent defense that the EMS and conductive garment are medically unnecessary.

The Applicant is awarded $360.04.

Infrared Lamp:

As for the infrared lamp Dr. Springer notes that AAOS, Literature Offers Little Direction on the Safety and Efficacy of Low-level Laser Therapy for Back Pain, Eric

Truumees, MD 2019. It is noted that 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.

The claimant was prescribed an infrared lamp. As per the above 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 suggestive of the indication of this device. There was no treatment plan regarding the use of this device. The reason why the infrared heating lamp was prescribed was not clearly understood. The claimant was already engaged in conservative treatment for the spine in the form of physical therapy. There was no evidence that conservative treatment failed in pain management. The claimant should have started with a course of conservative treatment for the right shoulder. The claimant should have been treated with adequate conservative treatment as it is clinically proven to have benefits in pain management. Hence, based on the above-cited article and the available medical records, the infra-red heating lamp prescribed to the claimant was not medically necessary.

Dr. Hirsch notes that Dr. Patel states that the infrared heating lamp and hydrotherapy whirlpool were not medically necessary as the patient's symptoms can be treated with conservative treatment such as physical therapy or local application of cold or hot packs.

Dr. Hirsch disagrees since it should be left to the discretion of the treating physician to decide which course of treatment, she wants the patient to use, as long as it works for the patient's aim to reduce her complaints; does not result in any side effects and is safe for the patient to use. The patient was prescribed the infrared heating lamp with stand as its application 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. 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. Infrared lamp in general has very low potential for any dangerous or unwanted side effects. Infrared lamp is one of the simplest, safest, and effective "Self-Care" technique for treating injuries, pain, discomfort in muscles and joints. 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. 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, they actually increase blood circulation in the muscles and help the body heal the injured area faster. The following literature clearly supports the use of infrared heat lamp. Dr. Hirsch reports that a randomized, controlled trial was 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 (Infrared therapy for chronic low back pain: A randomized, controlled trial GD Gale, et al The Journal of the Canadian Pain Society, 2006).

After considering the arguments for and against the medical necessity for the infrared lamp, I am more persuaded by Dr. Springer's position that it was medically unnecessary. Dr. Hirsch peer review rebuttal discusses the use and benefit of infrared treatment and asserts that the 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 her support for the home use of the device focus on reducing chronic low back pain. There is no indication in the record that the Assignor was suffering from chronic low back pain when the device was prescribed. Therefore, I find more acceptable Dr. Springer's assessment that the Assignor was receiving conservative treatment clinically proven to provide benefit in pain management and therefore the infrared lamp prescribed was not medically necessary.

Applicant's claim is denied.

Massager:

Regarding the massager Dr. Springer cites to the 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 that "*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.24,25 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.15 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. Springer goes on to refer to the 2019, Massage Guide: Some Warnings Regarding Use of Vibration Massage Therapy, noting a vibration massage therapy may not be an appropriate solution 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 and if you are taking medicines that thin blood.

The claimant was prescribed a massager. As 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." However, based on the available medical records, there was a lack of documentation substantiating that the claimant had osteoarthritis. The documents indicating the need for a massager were not provided. In addition, as per the above article, vibration massage therapy may not be an appropriate solution in all cases of injuries and pains because of the intensity of these therapies. Too high intensity could be dangerous and may worsen conditions. The claimant was already engaged in conservative treatment for the spine in the form of physical therapy and chiropractic treatment. There was no evidence that conservative treatment failed in pain management. The claimant should have started with a course of conservative treatment for the right shoulder. The claimant should have been treated with adequate conservative treatment as it is clinically proven benefits in pain management. Hence, based on the above article, the massager provided to the claimant was not medically necessary.

Dr. Hirsch disagrees with Dr. Springer's conclusion that the massager was not medically necessary as vibration massage therapy may not be an appropriate solution in all cases of injuries and pains because of the intensity of these therapies since the treating physician who is responsible for the care and treatment of the patient is in the best position to determine the need for continued treatment.

According to Dr. Horsch, the massager has been clinically proven to reduce stress and relieve muscle tension and stiffness. It can also increase blood flow to the 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. Importantly, the massager provided palliative treatment to the patient which provides temporary relief from pain. Anything that can ease the patient's pain is medically necessary and warranted. Dr. Hirsch reports that 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 authored by Furlan AD, et al it is concluded that "*Massage might be beneficial for patients with subacute and chronic nonspecific low back pain, especially when combined with exercises and education.*" It is further noted that a device, which produces a wide range of tension relieving actions for deep tissue relaxation. ([National Institute of Arthritis and musculoskeletal and skin diseases, Medline Plus, US National Library of Medicine).

After review, 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.

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, and infrared lamp that Dr. Springer 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. Springer'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 (DOS: 7/7/22 and 8/18/22), general use cushion, bed board, cervical traction unit, EMS and conductive garment and massager I find Dr. Springer' peer review insufficient to establish that the supplies were medically unnecessary or the rebuttal by Dr. Hirsch is 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 $3,451.84.

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**
	EM Medical Supplies Corp.	**07/07/22 - 07/07/22**	**$1,418.69**	**Awarded: $1,144.17**

	EM Medical Supplies Corp.	**08/18/22 - 08/18/22**	**$896.92**	**Denied**
	EM Medical Supplies Corp.	**08/18/22 - 08/18/22**	**$502.63**	**Awarded: $502.63**
	EM Medical Supplies Corp.	**08/18/22 - 08/18/22**	**$1,150.00**	**Awarded: $1,150.00**
	EM Medical Supplies Corp.	**08/18/22 - 08/18/22**	**$865.04**	**Awarded: $655.04**
Total			**$4,833.28**	**Awarded: $3,451.84**

B. The insurer shall also compute and pay the applicant interest set forth below. 10/30/2022 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:
10c7b9f5853c7f5bcfe5f168f7b5db4b

Electronically Signed

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