American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dynamic Core Physical Therapy PC (Applicant)	AAA Case No.	17-23-1296-7048
	Applicant's File No.	NF 3735272
- and -	Insurer's Claim File No.	0642656755 2NG
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Paul Weidenbaum, 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: IP

1. Hearing(s) held on 12/14/2023
   Declared closed by the arbitrator on 12/14/2023

   Clifford Ryan from The Law Office of Thomas Tona, PC participated virtually for the Applicant

   John Palatianos from Law Office Of Lawrence & Lawrence participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,694.72**, was NOT AMENDED at the oral hearing.
   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   This arbitration arises out of physical therapy services provided to the injured person, a 61 year old female, who was involved in a motor vehicle accident which occurred on 9/22/21.

   Whether the physical therapy services provided to the claimant were medically necessary in light of the Independent Medical Examination [IME] performed by Dr. Kamler on 3/19/22?

4. Findings, Conclusions, and Basis Therefor

This arbitration arises out of physical therapy services provided to the injured person, a 61 year old female who was involved in a motor vehicle accident which occurred on 9/22/21. Applicant seeks reimbursement in the sum of $3,694.72. Respondent timely denied payment of the disputed balance based upon an Independent Medical Exam (IME) by Dr. Kamler on 3/19/22, with an effective cut-off date of 4/11/22.

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

The burden shifts to the insurer to prove that the services were not medically necessary. If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; Kings Medical Supply Inc. v. Country Wide Insurance Company, 783 N.Y.S. 2d at 448 & 452; Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.). An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

Dr. Kamler reported his findings based upon the IME as follows:

The claimant reported having taken Diclofenac earlier on the IME date. The claimant ambulated with a normal gait, with no antalgia.

In the cervical spine, there was a normal lordosis. There was no tenderness and no muscle spasm. Range of motion was within normal limits. Muscle strength was 5+ in the upper extremities and deep tendon reflexes were 2+. There were negative cervical distraction and cervical compression tests, as well as a negative Valsalva's maneuver.

In the thoracolumbar spine and the sacral spine, there was no tenderness and no muscle spasm. Range of motion was within normal limits. Muscle strength was 5+ in the lower extremities and deep tendon reflexes were 2+. There were negative straight leg raising, Braggard's, Fabere's, Hoover's, pelvic rock, and cross-leg straight leg raising tests.

In the shoulders, there was mild tenderness over the right coracoid area. There was no atrophy. Active range of motion was fluid and without crepitus. Range of motion was within normal limits. Muscle strength was 5/5 throughout the lower extremities. Sensation was intact in C4, C5, and Ti through T5. There were negative Neer's, Yergason's, Drop arm and Apprehension tests.

In the elbows, there was no tenderness and no atrophy. Range of motion was within normal limits. Muscle strength was intact throughout, as was sensation.

In the wrists and hands, there was no atrophy, swelling or tenderness. Range of motion was within normal limits. Muscle strength and sensation were intact.

In the hips and pelvis, there was no hyperlordosis. There was no selling, defects or atrophy. Range of motion was within normal limits. Muscle strength was 5/5 in the flexors, extensors, abductors and adductors. Sensation was intact. There was a negative Trendelenburg's test.

In the knees, there was no atrophy and no tenderness. Range of motion was within normal limits. There was no instability. Muscle strength was intact, as was sensation.

In the feet and ankles, there was no tenderness. Range of motion was within normal limits. Muscle strength and sensation were intact.

A diagnosis was rendered coinsisting of cervical, throacic and lumbar spine sprain/strain, resolved; right shoulder sprain/strain, resolved; right hip sprain/strain, resolved. The examination of the right knee was normal. There was no objective evidence of a disability.

The case law states that if the insurer presents sufficient evidence establishing a lack of medical necessity, then the burden shifts back to the Applicant to present its own evidence of medical necessity. See: West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.,13 Misc3d 131A (2006).

Applicant submitted a rebuttal prepared by Daniel Cieleski, P.T. dated 11/4/23, in which he asserts the following:

The physical therapy daily notes for the period from 3/21/22 through 3/6/23 revealed complaints of persistent neck pain, low back pain and hip pain. The physical therapy progress notes for the period from 4/4/22 through 3/6/23 revealed persistent and constant neck pain, intermittent low back pain, sharp right shoulder pain, and intermittent right hip pain. In light of the positive findings consistently found on examination before, during and after the IME, Dr. Kamler incorrectly recommended no further physical therapy treatment. The claimant had continued complaints of pain. This finding, in and of itself, warranted further physical therapy treatment. The patient was diagnosed with low back pain, pain in the right hip, cervicalgia, pain in the right shoulder and impingement syndrome of the right shoulder, which contradicts the IME doctor's conclusion that the patient's condition had resolved as of the cutoff date of 4/11/22.

These findings stand in contradiction to Respondent's IME. Applicant was confronted with certain subjective complaints as well as objective clinical findings, and opined that further evaluation and physical therapy treatment was medically necessary. A treating physician cannot merely discount and disregard his/her patient's subjective complaints as unfounded and irrational. Since there is such a divergence of medical opinions as to the necessity of the disputed medical treatment, I feel bound to defer to the opinions of Assignor's treating physician rather than to the opinions set forth in the IME report of Respondent's consultant, who was not personally responsible for the claimant's care and treatment.

I find Applicant's assessment to be credible and convincing. Accordingly, after a careful review of the records and consideration of the parties' oral arguments, I find as a matter of fact that Applicant has met its burden of establishing a *prima facie* case and Respondent failed to rebut it with evidence that the physical therapy services were not medically necessary. I therefore find for the Applicant. Reimbursement as requested is due and owing herein. This decision is in full disposition of all claims for reimbursement of No-Fault benefits presently pending before this Arbitrator.

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
	Dynamic Core Physical Therapy PC	**11/07/22 - 03/06/23**	**$3,694.72**	**Awarded: $3,694.72**
Total			**$3,694.72**	**Awarded: $3,694.72**

B. The insurer shall also compute and pay the applicant interest set forth below. 04/25/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   Interest runs from the filing date for this case, 4/25/23, until payment has been made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

   After calculating the sum total of the first party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a minimum of $60 and a maximum of $850. See 11 NYCRR Section 65-4.6(c) and (e). However, if the benefits and interest awarded thereon are less than or equal to Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(b). For cases filed after February 4, 2015 there is no minimum fee and a maximum fee of $1,360.00.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of NASSAU

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

12/16/2023
(Dated)

Paul Weidenbaum

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:
9162aa23a1a04461a25ce1846f484cc9

Electronically Signed

Your name: Paul Weidenbaum
Signed on: 12/16/2023