American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

33 Rx Inc DBA Family Care Pharmacy (Applicant)	AAA Case No.	17-24-1336-4105
	Applicant's File No.	LIP-33982
- and -	Insurer's Claim File No.	8770808910000001
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Mitchell Lustig, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD:**

Injured Person(s) hereinafter referred to as: Assignor

1. Hearing(s) held on 09/09/2024
   Declared closed by the arbitrator on 09/09/2024

   Usman Nawaz, Esq. from Law Offices of Ilya E Parnas P.C. participated virtually for the Applicant

   Elba Cornier from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$4,684.20**, was NOT AMENDED at the oral hearing.
   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   In dispute is Applicant 33 Rx Inc. D/BA Family Health Care Pharmacy's clam as the assignee of a 20- year-old female injured in a motor vehicle accident on November 7, 2023, for reimbursement in the sum of $4,684.20 for lidocaine ointment ($1,905.00), ibuprofen ($48.00), diclofenac sodium gel ($2,358.00) and cyclobenzaprine ($373.20) dispensed to the Assignor on December 26, 2023.

   The prescription medication was prescribed by Idy Liang, N.P. on December 12, 2023 after examining the Assignor.

   The Respondent timely denied the claim based upon a peer review report by Dr. Nilesh Vyas dated January 29, 2024 concluding that the prescription medication was not

medically necessary. Thus, the issue presented for my determination is whether the Respondent has proved that the prescription medication dispensed to the Assignor was not medically necessary.

Although the insurer also preserved a fee schedule defense by checking off box 18 on the NF-10 denial of claim forms, see Arco Medical N.Y. P.C. v. Lancer Ins. Co., 37 Misc.3d 136(A), 2012 N.Y. Slip Op. 52178 (App. Term 2nd, 11th and 13th Jud.Dists.2012), in the absence of any proof, Respondent has failed to establish that the fees charged were excessive and not in accordance with the Workers' Compensation fee schedule. See Vincent Med. Services, P.C. v. Geico Ins. Co., 2010 N.Y. Slip Op. 52153(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2010); St. Vincent Medical Care, P.C. v. Country-Wide Ins. Co., 2010 N.Y. Slip Op. 50488(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2010).

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center. This decision is based upon the submissions of the parties and the arguments made by the parties at the hearing.

It is well settled that a heath care provider establishes its prima facie entitlement to No-Fault benefits as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of No-Fault benefits were overdue. Westchester Medical Center v. Lincoln General Insurance Company, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2nd Dept. 2009).

Upon proof of a prima facie case by the applicant, the burden shifts to the insurer to prove that the services were not medically necessary. A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App. Term 2d and 11th Jud. Dists. 2004).

WHETHER THE PRESCRIPTION MEDICATION WAS MEDICALLY NECESSARY

In the event that an insurer relies on a peer review report or independent medical examination to demonstrate that a particular service was medically unnecessary, the medical expert's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. In addition, the expert's opinion must be supported by evidence of generally accepted medical/professional practice or standards. Nir v. Allstate Insurance Company, 7 Misc3d 544, 2005 N.Y. Slip Op. 25090 (N.Y. Civ. Ct. Kings Co. 2005). Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling. The opinion of the insurer's expert, standing alone, is insufficient to carry the insurer's burden to prove that the services were not medically necessary. CityWide Social Work & Psychological Services, PLLC v. Travelers Indemnity Co., 3

Misc.3d 608, 777 N.Y.S.2d 241 (N.Y. Civ. Ct. Kings Co. 2004).; Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance Company, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App. Term 2nd and 11th Jud. Dists. 2008.

In concluding that the lidocaine ointment was not medically necessary, Dr. Vyas stated as follows in his peer review report dated January 29, 2024:

> "Topical lidocaine can be indicated as a first-line treatment for neuropathic pain due to postherpetic neuralgia or diabetic peripheral neuropathy. For other causes of neuropathic pain, it indicated as a second- or third-line treatment when a diagnosis of neuropathic pain is documented and other first-line tricyclic antidepressant medications have failed."

In concluding that the diclofenac sodium gel was not medically necessary, Dr. Vyas stated as follows in his peer review report: "Standard care guidelines recommend oral NSAIDs as the primary pain management strategy, barring contraindications."

With regard to the ibuprofen, Dr Vyas stated that the latter medication was not medically necessary because the "documentation does not provide clarity as to why over-the-counter NSAIDs were not recommended initially."

Finally, Dr. Vyas stated that the cyclobenzaprine, a muscle relaxant, was not medically necessary for the following reason: "Reviewing the studies and medical standard of care, it is noted that muscle relaxants should only be used for short term and with extreme caution due to the concern for sedation."

Inasmuch as the peer reviewer "demonstrated a factual basis and medical rationale for his determination that there was no medical necessity for the {prescription medication} at issue here," "the burden shifted to the (the provider) to present (its) own evidence of medical necessity." See Cappelllo v. Global Liberty Insurance Company, 57 Misc.3d 143(A), 2017 N.Y. Slip Op. 51415(U) (App. Term 1st Dept. 2017).

In order for an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. See High Quality Medical, P.C. v. Mercury, Ins. Co. 26 Misc.3d145(A) (App. Term 2nd, 11th and 13th Jud. Dists. 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A) (App. Term 2d, 11th and 13th Jud.Dists. 2009).

To refute the peer review, the Applicant submitted a rebuttal by Idy Liang, NP dated August 27, 2024. In her rebuttal, Idy Liang noted the positive findings in her examination of the Assignor on December 12, 2023, including the Assignor's complaints of neck pain associated with stiffness and tightness, lower back pain radiating to the

bilateral thigh, bilateral hip pain associated with soreness, bilateral knee pain associated with soreness as well as positive orthopedic test results in the upper and lower extremities.

With regard to Dr. Vyas' assertion that lidocaine is only indicated for neuropathic pain due to post-herpetic neuralgia or diabetic peripheral neuropathy, Ms. Liang stated as follows: "I would note that post herpetic neuralgia and diabetic peripheral neuropathy are not the only indications for the prescription of Lidocaine 5 % ointment." Ms. Liang further noted that the Assignor "was having pain in multiple body parts" and that "topical lidocaine plays an important role in providing relief at a targeted body part." Therefore, she asserted that the prescription for lidocaine was warranted.

In addition, Ms. Liang stated that the cyclobenzaprine was medically necessary because the latter medication "is a common medication for pain" and is used in cases of "both acute and chronic pain."

Ms. Liang further noted that the ibuprofen was medically necessary because "ibuprofen is used to "treat pain or inflammation."

Finally, in response to Dr. Vyas's opinion that the diclofenac sodium gel was not medically necessary because "standard care guidelines recommend oral NSAID as the primary pain strategy barring contraindications," Ms. Liang noted as follows in her rebuttal:

> "I note that the contraindication to oral medications is not the only indication for the prescription of topical medication and also topical medication are not a replacement to the oral medications. While topical application may be the only option for some patients who are unable to tolerate oral medication, there is no established medical standard that people who are able to tolerate oral medication should not be given topical medication"

The conflicting medical expert opinions adduced by the parties sufficed to raise an issue as to the medical necessity of the treatment underlying the provider's first-party no-fault claim. 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).

After careful consideration of the evidence, including Idy Liang, NP's rebuttal, I find that the Respondent has submitted sufficient evidence to satisfy its burden of proof that the lidocaine ointment was not medically necessary. I am persuaded by Dr. Vyas' opinion that lidocaine ointment is "indicated as a first-line treatment for neuropathic

pain due to post herpetic neuralgia or diabetic neuropathy," which was not the case with the Assignor. Accordingly, the Applicant is denied reimbursement for the lidocaine ointment.

However, I am not persuaded by Dr. Vyas' opinion that the ibuprofen, diclofenac sodium gel and cyclobenzaprine were not medically necessary. Specifically, I find that Ms. Liang's rebuttal meaningfully refers to and refutes the peer review and establishes in a credible and convincing manner that the ibuprofen, diclofenac sodium gel and cyclobenzaprine were necessary to treat the Assignor's injuries arising out of the within accident. Accordingly, the Applicant is awarded the sum of $2,779.20 for the ibuprofen, diclofenac sodium gel and the cyclobenzaprine.

Based upon the foregoing, I find in favor of the Applicant in the sum of $2,779.20.

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**
	33 Rx Inc DBA Family Care Pharmacy	**12/26/23 - 12/26/23**	**$4,684.20**	**Awarded: $2,779.20**
Total			**$4,684.20**	**Awarded: $2,779.20**

B. The insurer shall also compute and pay the applicant interest set forth below. 02/14/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall pay interest from February 14, 2024, the date that arbitration was requested, to the date of payment

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 the applicant an attorney's fee equal to 20% of that total sum, subject to a maximum of $1,360.00. See 11 NYCRR 65-4.6(d). However, if the benefits and interest awarded thereon is equal to or less than the 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).

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

09/11/2024
(Dated)

Mitchell Lustig

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:
0b3fe30709355edadf5410866c9fcf85

Electronically Signed

Your name: Mitchell Lustig
Signed on: 09/11/2024