American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All City Family Healthcare Center (Applicant)	AAA Case No.	17-24-1348-6246
	Applicant's File No.	NA
- and -	Insurer's Claim File No.	802402023324-001
	NAIC No.	10791
Palisades Insurance Company (Respondent)		

ARBITRATION AWARD

I, Melissa Melis, 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: patient

1. Hearing(s) held on 10/09/2024
   Declared closed by the arbitrator on 10/09/2024

   Robert Cippitelli, Esq. from Jakubowitz Law Firm PC participated virtually for the Applicant

   Noel Lastre, Esq from Law Office of William J. Fitzula participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$5,073.42**, 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

   The patient, a 35 year old female driver was involved in an automobile collision on November 1, 2021. The Applicant was the facility where arthroscopic surgery was performed on the patient's ankle on January 12, 2022 and the patient was provided with a platelet rich plasma injection. The claim of payment was denied based on the peer review by Dr. Robert Levy dated March 25, 2022. The issue is whether or not the Applicant is entitled to No-fault benefits.

4. Findings, Conclusions, and Basis Therefor

The Applicant is seeking reimbursement for the facility fee and the platelet rich plasma injection for the left ankle arthroscopy performed on the patient on Janaury 12, 2022. 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 Applicant submitted a bill to the Respondent for payment. The Applicant established its prima facie entitlement to No-fault benefits by proof of the submission to the Respondent of a claim form, proof of the fact and the amount of the loss sustained, and proof either that the Respondent had failed to pay or deny the claim within the requisite 30-day period, or that the Respondent had issued a timely deninal of claim that was conclusory vague or without merit as a matter of law. Ave T MPC Corp. v Auto One Ins. Co., 32 Misc.3d 128 (A), 2011 NY Slip Op 51292 (U), 2011 WL 2712964 (App. Term 2d, 11th & 13th Dists., July 5, 2011).

The claim of payment was denied based on the peer review by Dr. Robert Levy dated March 25, 2022. Dr. Levy reviewed some medical records and opined that the arthroscopic surgery and accompanying services performed on the patient's left ankle on January 12, 2022 was not medically necessary. He stated that based on the available records, the claimant received only 7 sessions of conservative care in the form of physical therapy for the left ankle which was inadequate to resolve the complaints. There was no documented evidence of contraindications for conservative treatment. The claimant's left ankle pain should have been initially treated with adequate conservative treatment in the form of physical therapy, acupuncture treatment, and a steroid injection before proceeding to the surgery. Dr. Levy stated that the standard of care would be a trial of conservative treatment with physical therapy and acupuncture for a period of several months and if the patient's condition did not respond, then a steroid injection. Surgery should not be considered until a period of 3-4 months passed. The ankle arthroscopy is indicated when conservative treatment fails to resolve the symptoms of ankle pain. In this case, the left ankle surgery was not warranted due to a lack of adequate conservative care. Dr. Levy cited to a medical journal article which stated that the majority of ankle injuries can be

treated conservatively but up to 20% result in chronic lateral ankle instability which may require surgical intervention. Dr. Levy concluded that this patient's condition did not require surgery and it was not medically necessary.

The Applicant submitted a rebuttal from Dr. Laxmidhar Diwan dated September 3, 2024. Dr. Diwan reviewed some medical records and opined that the arthroscopic surgery and accompanying services performed on the patient's left ankle on January 12, 2022 was medically necessary. He stated that this patient was suffering from severe pain interfering with basic activities for a period of 11 weeks. "...The ankle condition failed to respond to conservative treatment with resting, using various medications, and attending PT at a weekly frequency for almost 2 months..." Dr. Diwan stated that the patient was still symptomatic despite the conservative care and required the surgery. Dr. Diwan stated that the procedures performed by the patient's treating medical provider met the standard of care and was medically necessary.

A defense that the medication was not medically necessary may properly be established with a peer review [Jacob Nir, as assignee of John Doe and Allstate, 7 Misc. 3d 544, 547 (Civ. Ct. 2005)], which must "set forth a factual basis and medical rationale for the peer reviewer's determination …." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2014). A peer review's medical rationale will be insufficient to meet respondent's burden of proof if: 1) not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice for its findings; or 3) it fails to provide specifics as to the claim at issue, is conclusory or vague. All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U)(Civ. Ct. 2012); Nir, supra.

I find based on the evidence that the Respondent has failed to set forth the medical rationale and factual basis for denying payment for the facility fee for the left ankle arthroscopy performed on the patient on January 12, 2022. The denial was based on the peer review by Dr. Howard Levy. Dr. Levy stated that thr patient only underwent 7 sessions of physical therapy and the standard of care would be physical therapy and acupuncture for several months and a steroid injection after that if the patient did not improve. However, Dr. Levy did not cite to any medical journal articles supporting that opinion. As was stated by Dr. Diwan, the patient underwent weekly therapy sessions for two months but still complained of severe pain. Dr. Levy cited to a medical journal article which stated that the surgery is a "...minimally invasive procedure...expected to reduce postoperative pain and promote faster recovery..." I find based on the evidence that the denial of payment for the facility fee for the left ankle arthroscopy and platelet rich plasma injection provided to the patient January 12, 2022 was not proper or substantiated.

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**
	All City Family Healthcare Center	**01/12/22 - 01/12/22**	**$3,902.16**	**Awarded: $3,902.16**
	All City Family Healthcare Center	**01/12/22 - 01/12/22**	**$1,171.26**	**Awarded: $1,171.26**
Total			**$5,073.42**	**Awarded: $5,073.42**

B. The insurer shall also compute and pay the applicant interest set forth below. 05/21/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

   11 NYCRR 65-3.9(a) provides, in pertinent part, "All overdue mandatory and additional personal injury protection benefits due an applicant or assignee shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30 day month..." Since this claim was timely denied but the action was not instituted until 30 days after the date of the denial, interest is due at a rate of

2% per month, simple from the date after the date of filing of this arbitration until the date of payment of this award.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d) which states: "For all other disputes subject to arbitration or court proceedings, subject to the provisions of subdivision (a) of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant per arbitration or court proceeding, subject to a maximum fee of $1,360..."

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

10/14/2024
(Dated)

Melissa Melis

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:
908c5f85fbe0209399425e1453d0e759

Electronically Signed

Your name: Melissa Melis
Signed on: 10/14/2024