

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

IP101LLC d/b/a Ilana's Pharmacy
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1343-5364
Applicant's File No.	GM24-749128
Insurer's Claim File No.	0301698500000002
NAIC No.	35882

ARBITRATION AWARD

I, Debbie Thomas, 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 09/25/2024
Declared closed by the arbitrator on 09/25/2024

Helen Cohen from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Robert LoFurno from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,938.96**, 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

Applicant seeks reimbursement in the amount \$1,938.96 for Diclofenac Gel 3%, Cyclobenzaprine 10 mg tablets, and Ibuprofen 600 mg tablets dispensed on January 22, 2024 to Assignor, P.F.H., a 56-year-old male who was the rear-seat passenger of a motor vehicle involved in an accident on April 17, 2023. Respondent denied payment based on the March 1, 2024 peer review report of Michael E. Tawfelllos, M.D., which determined that the medications were not medically necessary. The issue presented is whether the prescription medication dispensed by Applicant was medically necessary.

4. Findings, Conclusions, and Basis Therefor

The within award is based upon this arbitrator's review of the record as well as oral argument at the time of the hearing of this matter.

Under Sec. 5102 of the New York Insurance Law (McKinney 1985), No-Fault first party benefits are reimbursement for all medically necessary expenses on account of personal injuries arising out of the use or operation of a motor vehicle.

It is well settled that a healthcare 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 (2 Dept. 2009); *see also Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denial indicating receipt of the proof of claim shows that Applicant mailed the proof of claim forms to the Respondent (*see, Ultra Diagnostic Imaging v. Liberty Mutual Insurance Co.*, 9 Misc.3d 97). The evidence is sufficient to make out a *prima facie* case of entitlement to recovery of Applicant's bill.

The burden then shifted to the insurer to come forward with sufficient evidence to rebut the presumption of medical necessity which attached to the providers' claim forms. *See, West Tremont Med. Diagnostic, PC v. Geico Ins. Co.*, 13 Misc.3d 131(A) (N.Y. App. Term 2006).

When an insurer relies upon a peer review report to demonstrate that a particular service was not medically necessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory. As per the holding in *Jacob Nir, M.D. v. Allstate Insurance Co.*, 7 Misc.3d 544 (2005), the peer reviewer must establish a factual basis and medical rationale to support a finding that the services were not medically necessary, including setting forth generally accepted standards in the medical community. 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. *See 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).

Once Respondent meets this burden of proof then the burden shifts back to Applicant to present competent medical proof as to the medical necessity for the disputed billing by a preponderance of the credible evidence. *West Tremont Medical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06); *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (See: Insurance Law §5102). *See Be Well Medical Supply, Inc. v. New York*

Cent. Mut. Fire Ins. Co., 18 Misc3d 139(A) (App. Term 2d & 11th Dists. Feb. 21, 2008).

In support of its contention that the prescription medication dispensed by Applicant was not medically necessary, Respondent relies upon the peer review report of Michael E. Tawfello, M.D. Dr. Tawfello notes that Assignor is a 56-year-old male who was the restrained rear-seat passenger of a motor vehicle involved in an accident on April 17, 2023. It was a rear-end collision. There was no loss of consciousness. He sustained injuries to his neck, left shoulder, mid- back, lower back, and left knee. Following the accident, he did not go to the hospital.

As per the initial evaluation report dated April 18, 2023 by David Carmili, M.D., Assignor had complaints of pain in the neck, upper back, and lower back rated as 8/10 on a pain scale. Examination of the cervical and lumbar spine revealed a decreased range of motion. The diagnoses were sprain of the ligaments of the cervical, thoracic, and lumbar spine. MRIs of the cervical and lumbar spine were ordered. Pain medications were prescribed. L1-L2 nerve block injection was performed.

As per the initial physical therapy evaluation report dated April 18, 2023 by Madeline Legaspl, P.T., DPT, Assignor was advised physical therapy. He received physical therapy from April 18, 2023 to January 10, 2024, in a total of 76 sessions for the spine, left shoulder, and left knee.

He was prescribed Naproxen 375 mg-esomeprazole on April 19, 2023.

As per the initial chiropractic evaluation report dated April 24, 2023, Michael Vargas, D.C., Assignor was advised chiropractic treatment. He received chiropractic treatment from April 24, 2023 to October 9, 2023 In a total of 52 sessions for the spine. None of the sessions were received for the left shoulder and left knee.

As per the initial evaluation report dated June 7, 2023 by Viviane Etienne, M.D., Assignor had complaints of pain in the neck, left shoulder, mid-back, lower back, and left knee rated as 8/10 on a pain scale. The neck pain was intermittent in nature which was radiating to the left shoulder. The left shoulder pain was constant. The lower back pain was intermittent in nature radiating to the left lower extremity. Examination of the cervical spine revealed trigger points. Examination of the left shoulder revealed atrophy. Impingement test was positive. Examination of the thoracic spine revealed tenderness over the latissimus dorsi. Examination of the lumbar spine revealed tenderness over the L3-S1 paraspinal region and L3-S1 lumbar vertebral spaces. Trigger points were noted. Examination of the left knee revealed tenderness over the superior pole of the patella and joint line. Varus and Valgus's Stress tests were positive. The overall range of motion was decreased and painful. The diagnoses were lumbar disc displacement, cervical

muscle strain, cervical paraspinal muscle spasm, disc displacement, thoracic back sprain, lumbar back sprain, internal derangement of left shoulder and left knee. MRIs were ordered. Pain medications were prescribed. Conservative treatment was advised. Trigger point injections were performed.

On June 7, 2023, Assignor underwent trigger point injection sat latissimus dorsi, erector spinae, and quadratus lumborum muscles under local anesthesia by Ajin Mathew, P.A. The preoperative and post-operative diagnoses were myofascial pain syndrome.

He was prescribed Lidocaine 5% ointment, Baclofen 20 mg tablets, and Diclofenac Sodium 3% gel.

The MRI report of the cervical spine dated June 24, 2023 revealed: Normal alignment of cervical lordosis. At C3-C4, broad-based central disc herniation is present, resulting in compression and impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 17.2 mm. Narrowing of the left neural foramen. At C4-C5, broad-based central disc herniation is present, resulting in compression and impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 9.7 mm. Narrowing of the left neural foramen. At C7-T1, broad-based central disc herniation is present, resulting in compression and impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 18.4 mm. Narrowing of the left neural foramen.

The MRI report of the lumbar spine dated June 24, 2023 revealed: Normal alignment of the lumbar spine. At L2-L3, broad-based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. The AP diameter of the dural sac measures 12.6 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots. At L3-L4, broad-based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures 15.5 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots. At L4-L5, broad-based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures 10.5 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots. At L5-S1, broad-based central disc herniation is present, resulting in

compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures 12.9 mm. Narrowing of the left neural foramen.

The MRI report of the left shoulder dated July 1, 2023 revealed: Degenerative changes around the shoulder. Cystic areas along the lateral aspect of the humeral head. Tendinosis at the humeral attachment of supraspinatus tendon. Mild fluid in subcoracoid bursa. Mild fluid in subacromial-subdeltoid bursa. Joint effusion.

The MRI report of the left knee dated July 1, 2023 revealed: Linear interstitial tearing of the distal quadriceps tendon superimposed on tendinitis. Degenerative changes around the knee joint. Loose body around the posterolateral aspect of the knee. Anterior cruciate ligament sprain sequelae. Mucoïd degeneration in medial meniscus. Joint effusion.

As per the follow-up report dated July 5, 2023 by Viviane Etienne, M.D., Assignor had complaints of pain in the neck, left shoulder, mid-back, lower back, and left knee rated as 8- 9/10 on a pain scale. The neck pain was intermittent in nature which was radiating to the left shoulder. The left shoulder pain was constant. The lower back pain was intermittent in nature which was radiating to the left lower extremity. The left knee pain was radiating to the left thigh. Examination of the cervical spine revealed trigger points. Examination of the left shoulder revealed atrophy. Impingement test was positive. Examination of the thoracic spine revealed tenderness over the latissimus dorsi. Examination of the lumbar spine revealed tenderness over the L3-S1 paraspinal region and L3-S1 lumbar vertebral spaces. Trigger points were noted. Examination of the left knee revealed tenderness over the superior pole of the patella and joint line. Varus and Valgus's Stress tests were positive. The overall range of motion was decreased and painful. The diagnoses were lumbar disc displacement, cervical muscle strain, cervical paraspinal muscle spasm, disc displacement, thoracic back sprain, lumbar back sprain, internal derangement of left shoulder and left knee. Pain medications were prescribed. Conservative treatment was advised. Trigger point injections were performed.

On July 5, 2023, Assignor underwent trigger point injection sat latissimus dorsi, erector spinae, and quadratus lumborum muscles under local anesthesia by Ajin Mathew, P.A. The preoperative and post-operative diagnoses were myofascial pain syndrome.

He was also Lidocaine 5% ointment, Baclofen 20 mg tablets, and Diclofenac Sodium 3% gel.

On July 19, 2023, Assignor underwent lumbar epidural steroid injection at L4-L5 level under MAC anesthesia by Solomon Halioua, M.D. The preoperative and post-operative diagnoses were lumbar radiculopathy.

As per the report dated October 2, 2023 by Aleksandr Khaimov, D.O., Assignor had a complaint of pain in the left knee rated as 9/10 on a pain scale. Examination of the left knee revealed tenderness over the patella and tibial region. The range of motion was decreased. McMurray test, Lachman test, and Patellofemoral Grinding test were positive. The diagnoses were traumatic medial meniscus tear, anterior cruciate ligament tear, joint effusion, patellofemoral chondral injury, traumatic internal derangement, and tendinitis/tear of the quadriceps tendon. Conservative treatment was advised.

As per the report dated October 16, 2023 by Aleksandr Khaimov, D.O., Assignor had a complaint of pain in the left knee rated as 9/10 on a pain scale. Examination of the left knee revealed tenderness over the patella and tibial region. The range of motion was decreased. McMurray test, Lachman test, and Patellofemoral Grinding test were positive. The diagnoses were traumatic medial meniscus tear, anterior cruciate ligament tear, joint effusion, patellofemoral chondral injury, traumatic internal derangement, and tendinitis/tear of the quadriceps tendon. Left knee arthroscopy was recommended.

As per the report dated October 31, 2023 by Keyvan Jahanbakhsh, M.D., Assignor had a complaint of pain in the neck and lower back. Examination of the cervical spine revealed tenderness over the facet joints. Trigger points were noted. Examination of the lumbar spine revealed trigger points. Straight Leg Raise test was positive. The overall range of motion was decreased. The diagnoses were cervicalgia, cervical disc displacement, cervical spondylosis, lower back pain, intervertebral disc displacement spondylosis, and radiculopathy of the lumbar spine. Lumbar epidural steroid injection was recommended.

As per the report dated January 15, 2024 by Boleslav Kosharsky, M.D., Assignor had complaints of pain in the neck, lower back, and left knee rated as 6-9/10 on a pain scale. Examination of the cervical spine revealed tenderness over the paraspinal muscles, spinous processes, interspinous ligaments, and medial border of the scapula. Muscle spasms were noted. The range of motion was decreased. Examination of the lumbar spine revealed tenderness over the sacroiliac region and L2-S1 spinous processes. Muscle spasms were noted. The range of motion was decreased. The diagnoses were other intervertebral disc displacement radiculopathy and disorder of the ligament of the lumbar and cervical region. Epidural steroid injections and trigger point injections were recommended.

On January 15, 2024, Assignor underwent L5-S1 interlaminar epidural steroid injection and trigger point injections, under anesthesia, by Mohammad Ghorbanhoseini, M.D. The diagnoses were other intervertebral disc displacement, radiculopathy, and muscle spasms of the lumbar region.

He was also prescribed Cyclobenzaprine HCl 10 mg tablets, Ibuprofen 600mg tablets, and Diclofenac Sodium 3% gel.

The standard of care for a musculoskeletal injury after a motor vehicle accident would begin with a reasonable trial of conservative treatment which consists of an evaluation by the physician, prescribing activity modification if necessary, encouraging return to activity as much as possible, prescription of medications such as anti-inflammatory medications, and conservative physiotherapy for 4-6 weeks, followed by another modified course of therapy and exercises program if the patient is not responding to the initial course of treatment. The long-term use of medication can lead to adverse effects and thus, should be avoided. Topical formulations are indicated as an alternative to oral therapy. They are used when the oral route is contraindicated due to swallowing problems, intractable nausea and vomiting, and when the drug in the formulation irritates the gastric mucosa. Several factors must be considered regarding topical preparations. Marked interindividual variability of skin properties may influence percutaneous absorption and distribution of the drug when applied topically. However, due to the absence of specific compliance and adherence studies comparing topical treatment versus traditional routes in pain management, the role of topical preparations in patient adherence remains obscure.

In this case, Assignor was involved in the MVA on April 17, 2023 and sustained injuries to the neck, left shoulder, mid-back, lower back, and left knee. He was prescribed Diclofenac Sodium 3% gel for pain management. Nearly all adverse effects from this medication were due to skin irritation. Only Diclofenac demonstrated a significant risk of adverse effects. Patients treated with Diclofenac also were more likely than those treated with a placebo to stop treatment. Assignor was receiving conservative treatment in the form of physical therapy, and chiropractic treatment for the affected regions. There was no documented evidence that these modalities failed in pain management or were aggravating his complaints. He should have initiated acupuncture treatment, an aerobic strengthening program, a home exercise program, and activity modifications as they are proven to be effective in pain management. The MRI studies revealed disc herniation and tear for which the topical medications cannot be beneficial as they would provide only provisional pain relief and would not promote healing. Moreover, on June 7, 2023 and July 5, 2023, Assignor was initially prescribed Diclofenac Sodium 3% gel. There was no evidence of significant improvement from the previously prescribed Diclofenac Sodium 3% gel. Therefore, the Diclofenac Sodium 3% gel provided to Assignor was not medically necessary including the future necessity.

In regards to Ibuprofen 600 mg tablets, a 2018 Systematic Review and Metaanalysis concluded that there is debate as to whether the use of nonsteroidal anti-inflammatory drugs (NSAIDs) is beneficial after acute skeletal muscle injury. Some studies have suggested that NSAID use may be detrimental to injured muscle.

In this case, Assignor was involved in the MVA on April 17, 2023 and sustained injuries to the neck, left shoulder, mid-back, lower back, and left knee. He was prescribed 60 tablets of Ibuprofen 600 mg for pain management, which indicated long-term use. The standard of care states that the long-term use of medication can lead to adverse effects and thus, should be avoided. As per the above article, there is debate as to whether the use of nonsteroidal anti-inflammatory drugs (NSAIDs) is beneficial after acute skeletal muscle injury. Some studies have suggested that NSAID use may be detrimental to injured muscles. Further, higher doses of NSAIDs cause an increased risk of serious gastrointestinal adverse events, especially in the elderly, including bleeding, ulceration, and perforation of the stomach or intestines, which can be fatal. Nonsteroidal anti-inflammatory drugs (NSAIDs) are a leading cause of drug-induced liver injury. The severity of the liver injury from ibuprofen ranges from asymptomatic elevations in serum aminotransferase levels to acute cholestatic hepatitis to acute liver failure and the need for transplantation. Several instances of chronic vanishing bile duct syndrome have been attributed to ibuprofen use. Based on the available medical records, Assignor was receiving conservative treatment in the form of physical therapy, and chiropractic treatment for the affected regions. There was no documented evidence that these modalities failed in pain management or were aggravating his complaints. He should have initiated acupuncture treatment, an aerobic strengthening program, a home exercise program, and activity modifications as they are proven to be effective in pain management. The MRI studies revealed disc herniation and tear cannot be resolved with the use of Ibuprofen 600 mg tablets. The long-term use of medication can lead to adverse effects and thus, should be avoided.

In regards to Cyclobenzaprine 10 mg tablets, there is a recent high-quality randomized controlled trial that suggests the minimal pain-relieving effect of cyclobenzaprine when used in addition to naproxen for patients with acute low back pain. There may be some benefit, although of questionable magnitude, to the use of cyclobenzaprine. There is a high likelihood of adverse effects. Further research is needed to conclusively address this question.

In this case, Assignor was involved in the MVA on April 17, 2023 and sustained injuries to the neck, left shoulder, mid-back, lower back, and left knee. He was prescribed 30 tablets of Cyclobenzaprine 10 mg which indicated long-term use. As per the standard of care, the long-term use of medication can lead to adverse effects and thus, should be avoided. As per the above-cited article, there may be some benefit, although of questionable magnitude, to the use of Cyclobenzaprine. There is a high likelihood of adverse effects. Further research is needed to conclusively address this question. The possible benefit of questionable magnitude has led us to rate this topic yellow with unclear benefits. Based on the available medical records, Assignor was receiving conservative treatment in the form of physical therapy and chiropractic treatment for the affected regions. There was no documented evidence that these modalities failed in pain management or were aggravating his complaints. He should have initiated acupuncture treatment, an aerobic strengthening program, a home exercise program, and activity modifications as they are proven to be effective in pain management. The MRI studies

revealed disc herniation and tear which cannot be resolved with the use of Cyclobenzaprine 10 mg tablets. The long-term use of medication can lead to adverse effects and thus, should be avoided. Therefore, based on the above-cited article and available medical records, the Cyclobenzaprine 10 mg tablets prescribed to Assignor not medically necessary.

Applicant submits a rebuttal to the peer review reports by Arun Agrawal, M.D., dated April 17, 2024. Dr. Agrawal notes that as a result of the May 22, 2023 motor vehicle accident, Assignor sustained injuries that required treatment.

Dr. Agrawal notes that on January 15, 2024, Assignor was evaluated by Boleslav Kosharsky, M.D., with the following complaints: Pain in the neck, lower back and left knee. The pain was rated at 6-9/10 on the pain scale.

Examination: Examination of the cervical spine revealed tenderness over the paraspinal muscles, spinous processes, interspinous ligaments, and medial border of the scapula. Lumbar spine revealed tenderness over the sacroiliac region and L2-S1 spinous processes. Muscle spasms were noted for the cervical and lumbar spine. The range of motion (ROM) was decreased for both cervical and lumbar spine.

Diagnoses: Intervertebral disc displacement of the lumbar region, cervical and lumbar cervical disc displacement, lumbar and cervical region radiculopathy and disorder of the ligament of vertebrae, and muscle spasm of back.

Plan: Recommended epidural steroid injections and trigger point injections.

He was also was prescribed Cyclobenzaprine HCL 10 mg Tablets, Ibuprofen 600mg Tablets, and Diclofenac Sodium 3% Gel which was delivered by Applicant on January 22, 2024 by Applicant.

With regard to the Diclofenac Sodium 3% Gel, Assignor was having pain in the neck, lower back and left knee with pain being 6-9/10 on the pain scale. Cervical spine revealed tenderness over the paraspinal muscles, spinous processes, interspinous ligaments, and medial border of the scapula along with tenderness over the sacroiliac region and L2-S1 spinous processes of the lumbar spine. There were muscle spasms and decreased range of motion too. Diclofenac is a nonsteroidal anti-inflammatory drug (NSAID). This medicine works by reducing substances in the body that cause pain and inflammation and treats mild to moderate pain, or signs and symptoms of osteoarthritis or rheumatoid arthritis. Assignor received physical therapy from April 18, 2023 to January 10, 2024 for the spine, left shoulder and left knee. Physical therapy is a part of rehabilitation but it cannot completely reduce the pain levels that Assignor was

experiencing. Physical therapy and Chiro Therapy have their limitations for patient's pain management. Assignor had visited Dr. Kosharskyy who is a pain management specialist, this only shows that Assignor had extreme pain levels. Physical therapy helps in movements and rehabilitation, but only when the pain level is controlled. So, rather than conservative therapy, the patient needs a medical route and get a pharmacological (medications) or injection as an intervention. This is especially true if the pain is occurring at a high level. A visit to the doctor or even a pain management physician may be better. Physical therapy movements help to alleviate the pain in the long run but when such interventions with movement makes the pain worse or just doesn't help at all, then it is time to go for other pain relief options as that of a topical application.

Topical analgesics are a promising class of agents for treatment of chronic pain. They can be used to supplement or replace systemic analgesics, improving clinical outcome while reducing the side effects and morbidity associated with systemic agents. Lidocaine, diclofenac, and capsaicin are now proved additions to the health-care provider's toolkit.

With regard to the Ibuprofen 600 mg Tablets, any trauma that happens to orthopedic tissue (tendon, ligament, cartilage, bone or muscle) stimulates an immune response that brings inflammation and causes localized pain. NSAIDs function to reduce this and effectively reduce the local swelling and pain. Pain medications like ibuprofen do not heal a herniated disc but they can help relieve the pain while the disc heals. Nonsteroidal anti-inflammatory drugs (NSAIDs) are used extensively for the management of acute pain, with ibuprofen being one of the most frequently used oral analgesics. The below data of the MRI of the cervical spine, lumbar spine, and left knee shows the degraded condition of Assignor and why Ibuprofen 600 mg was provided.

Assignor underwent an MRI of the cervical spine on June 24, 2023, which revealed the following:

At C3-C4, broad-based central disc herniation present, resulting in compression and impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 17.2 mm

At C4-C5, broad-based central disc herniation present. Impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 9.7 mm. Narrowing of the left neural foramen.

At C7-T1, broad-based central disc herniation present, resulting in compression and impingement of the ventral CSF space. AP diameter of disc protrusion measures 2.2 mm. The transverse dimension of the protruded portion of the disc measures 10 mm. AP diameter of the canal measures 18.4 mm. Narrowing of the left neural foramen.

Further. the MRI report of the lumbar spine dated June 24, 2023 revealed:

At L2-L3, broad-based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. The AP diameter of the dural sac measures 12.6 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots.

At L3-L4, broad based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures 15.5 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots.

At L4-L5, broad-based central disc herniation is present with an annular tear, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures 10.5 mm. Narrowing of neural foramina bilaterally with probable impingement of the exiting nerve roots.

At LS-S1, broad-based central disc herniation is present, resulting in compression and impingement upon the ventral thecal sac. AP diameter of disc protrusion measures 3.2 mm. The transverse dimension of the protruded portion of the disc measures 12 mm. AP diameter of the dural sac measures

12.9 mm. Narrowing of the left neural foramen.

The MRI report of the left knee dated July 1, 2023 revealed:

Linear interstitial tearing of the distal quadriceps tendon superimposed on tendinitis.

Anterior cruciate ligament sprain sequelae. Muroid degeneration in medial meniscus. Joint effusion.

These findings suggest that Assignor was having extreme levels of pain and prescribing Ibuprofen can help with the pain caused due to such injuries.

Ibuprofen is the most commonly used and most frequently prescribed NSAID. It is a non-selective inhibitor of cyclo-oxygenase-1 (COX-1) and Cyclooxygenase-2 (COX-2). Ibuprofen is suitable for self-medication with regards to its relatively wide spectrum of indication, good tolerance and safety.

Ibuprofen can be effectively used and has better ratio of tolerability and safety. Here, Assignor was a 55-year-old male and it is better to provide a medication like Ibuprofen as the safety profile is much better and any treating physician would want to have patient's health as a priority. Definitely the tears wouldn't resolve with this medication but it would do what it is best at, that is pain reduction which is essential for the patient and hence the denial does not sustain.

With regard to the Cyclobenzaprine 10 mg Tablets, Assignor was having pain and multiple areas of injury which includes tears and herniations in various regions. Cyclobenzaprine is used to treat muscle spasms that occur because of acute musculoskeletal conditions. After sustaining an injury, muscle spasms occur to stabilize the affected body part, which may increase pain to prevent further damage. Cyclobenzaprine is used to treat such muscle spasms associated with acute, painful musculoskeletal conditions. Cyclobenzaprine acts in the central nervous system to reduce tonic muscle activity probably due to actions on both the α and γ motor neurons. Cyclobenzaprine effectively improves muscle spasms, reduces local pain and tenderness, and increases the range of motion in acute, painful musculoskeletal conditions.

Cyclobenzaprine is FDA-approved as an adjunct to rest for the treatment of muscle spasms associated with acute, painful musculoskeletal conditions. Cyclobenzaprine is a part of a group of medications referred to as cyclical antidepressants. Cyclobenzaprine works in the central nervous system (CNS) as a depressant that reduces muscle hyperactivity.

Cyclobenzaprine effectively deals with the muscle spasm, and other painful musculoskeletal conditions. Here, Assignor was having multiple areas of injury which included tears and herniation, which means he would be having pain and spasms too if the muscles are tightened up that usually happens post an injury, so giving a home exercise program or strengthening wouldn't be effective as the patient's main symptoms of pain, spasm and tenderness still is present. When these symptoms are reduced or dealt with, further conservative care can be provided. Hence, providing the patient with Cyclobenzaprine was needed as a part of rehabilitation and care.

After careful consideration of the documents submitted and the parties' oral arguments at the hearing, I find in favor of Applicant with regard to the prescription medication dispensed to Assignor. Dr. Tawfellos argues that the MRI studies revealed disc herniation and tear, for which topical medications cannot be beneficial as they would provide only provisional pain relief and would not promote healing. Topical pain medication cannot repair a tear or disc herniation. The purpose of the medication is to provide provisional pain relief, which Dr. Tawfellos agrees they do. Dr. Tawfellos denied the Diclofenac Gel 3%, arguing that topical formulations are indicated as an alternative to oral therapy and are prescribed when the drug in the formulation irritates

the gastric mucosa. He goes on to deny the Ibuprofen 600 mg tablets, arguing that higher doses of NSAIDs cause an increased risk of serious gastrointestinal adverse events. Based on these arguments, the Diclofenac Gel 3% would be indicated. Dr. Tawfellos sets forth the standard of care for a musculoskeletal injury after a motor vehicle accident, which would begin with a reasonable trial of conservative treatment consisting of an evaluation by the physician, prescribing activity modification if necessary, encouraging return to activity as much as possible, prescription of medications such as anti-inflammatory medications, and conservative physiotherapy for 4-6 weeks, followed by another modified course of therapy and exercises program if the patient is not responding to the initial course of treatment. He then goes on to state that there is debate as to whether the use of nonsteroidal anti-inflammatory drugs is beneficial after acute skeletal muscle injury, and that some studies have suggested that NSAID use may be detrimental to injured muscles. I find Dr. Tawfellos' peer review report contradictory and confusing as he seems to state that specific medications are within the standard of care or indicated in this instance, but later deny those same medications. With regard to the Cyclobenzaprine 10mg tablets, Dr. Tawfellos states that there may be some benefit, although of questionable magnitude, to the use of Cyclobenzaprine. There is a high likelihood of adverse effects. Further research is needed to conclusively address this question. These statements do not establish a lack of medical necessity, only that further research is needed. Dr. Agrawal in his rebuttal also addresses the benefits of each of the medications dispensed to Assignor and their use for the treatment of musculoskeletal injuries, such as those sustained by Assignor. Dr. Agrawal goes on to note that the medications here would not heal a herniated disc but they can help relieve symptoms of pain, spasm, and tenderness while the disc heals. I find that the rebuttal of Dr. Agrawal presents a cogent medical rationale for the prescription of these medications. Accordingly, an award will be entered in favor of Applicant.

Fee Schedule

Respondent maintains the charges for Diclofenac 3% gel are in excess of or not in accordance with the applicable fee schedule.

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. In the absence of such proof, a defense of noncompliance with the appropriate fee schedule cannot be sustained. *Continental Medical, P.C. v. Travelers Indemnity Company*, 11 Misc. 3d 145(A), 2006 N.Y. Slip Op. 50841(U) (App. Term 1st Dept. 2006). A lay person is not qualified to evaluate the CPT codes or to change if the code is used by a health provider in its bills. *See Abraham v. Country-Wide Ins. Co.*, 3 Misc. 3d. 130A (App. Term 2d. Dept. 2004). Once the insurer makes a *prima facie* showing that the amounts charged by a provider were in excess of the fee schedule, the burden shifts to the provider to show that the charges involved a

different interpretation of such schedule or an inadvertent miscalculation or error. *Cornell Medical, P.C. v. Mercury Casualty Co.*, 24 Misc. 3d 58, 884 N.Y.S.3d 558 (App. Term 2d, 11th & 13th Dists. 2009).

In support of its fee schedule defense, Respondent submits a fee audit reducing the allowed amount to \$183.50. Respondent offers the following explanation for its reduction:

Payment based of the NY Pharmacy Fee Schedule listed in Subchapter M
(Section 440.5)
Billed as QTY 100

I do not find Respondent's audit sufficient to raise a substantial question of fact as to Respondent's fee schedule defense to require the Applicant to come forward with additional evidence in support of its billing. There is no basis or rationale provided for the reduction of reimbursement or how the reimbursement amount in the audit was reached. Therefore, I find that Respondent failed to substantiate its fee schedule defense in this case. Accordingly, Applicant's claim for reimbursement is awarded.

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
	IP101LLC	01/22/24 -		Awarded:

	d/b/a Ilana's Pharmacy	01/22/24	\$1,938.96	\$1,938.96
Total			\$1,938.96	Awarded: \$1,938.96

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/10/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

In accordance with 11 NYCRR 65-3.9(c) interest shall be paid on the claim awarded in the amount of \$1,938.96 from April 10, 2024, the date the arbitration was commenced.

C. Attorney's Fees

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

In accordance with 11 NYCRR 65-4.6(d) the insurer shall pay Applicant an attorney's fee on the claim awarded in the amount of \$1,938.96.

- 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, Debbie Thomas, 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)

Debbie Thomas

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:
80f813fa8a1210a77e077fcb963d2da3

Electronically Signed

Your name: Debbie Thomas
Signed on: 10/14/2024