American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kuman Medical Supply Inc.
(Applicant)

- and -

Integon National Insurance Company
(Respondent)

AAA Case No.	17-24-1351-1211
Applicant's File No.	RB-201-427321
Insurer's Claim File No.	9XINY12496
NAIC No.	29742

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-RR

1. Hearing(s) held on 08/12/2025
   Declared closed by the arbitrator on 08/12/2025

   Elyse R. Ulino, Esq. from Baker & Narkolayeva Law P.C. participated virtually for the Applicant

   Lauren Hirschfeld, Esq. from Law Offices of Eric Fendt participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$3,354.52**, 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, the Respondent timely denied the claims in issue and the amount in dispute does not exceed the permissible fees allowable for items of medical supplies under the New York State Medicaid Durable Medical Equipment fee schedule adopted for no-fault claims.

3. Summary of Issues in Dispute

   The record reveals that the Assignor-RR, a 38-year-old-male, sustained injuries in a motor vehicle accident on 12/12/23. The Applicant seeks reimbursement for durable

medical equipment (DME) provided to the Assignor on 1/9/24 and 1/29/24. The Respondent denied reimbursement based on peer reviews. The issue is whether the DME prescribed was medically necessary.

4. Findings, Conclusions, and Basis Therefor

The Applicant filed this arbitration in the amount of $3,354.52 for disputed fees in connection with DME provided to the Assignor on 1/9/24 and 1/29/24.

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 the 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: 1/9/24

The Applicant provided the Assignor with an EMS/TENS unit four leads, a portable whirlpool, infrared heating lamp and electric percussive massager on 1/9/24. The supplies were prescribed to the Assignor by Kamal Tadros, MD on 12/21/23. The Respondent denied reimbursement based on a peer review by Dr. Alan P. Wolf dated 2/27/24.

Dr. Wolf provides a history of the Assignor as being a belted driver involved in a motor vehicle accident on 12/12/23. Dr. Tadros initially evaluated the claimant on 12/21/23 with complaints of neck, mid and low back pain, left shoulder and bilateral knee pain, headache and dizziness. The claimant was treated with a physical therapy program. The claimant was prescribed medications and medical supplies. The medications were dispensed on 12/22/23 and the medical supplies were dispensed on 01/09/24.

Based on the medical records provided, Dr. Wolf concluded the EMS/TENS unit four leads (neuromuscular stimulator), hydrotherapy whirlpool portable, infrared heating lamp with stand and percussive massager electric dispensed 1/9/24 were not medically necessary. According to Dr. Wolf, the basis for the medical supplies was Dr. Tadros' initial evaluation of 12/21/23. Physical examination findings included range of motion restrictions of the cervical and thoracolumbar spine with tenderness and muscle spasm. There was also range of motion restrictions of the left shoulder and bilateral knees. There was no evidence of clinical orthopedic instability of the spine or extremities. Dr.

Wolf notes that Dr. Tadros did not provide any specific rationale as to why the claimant was prescribed multiple medical supplies in addition to the physical therapy program. There was no rationale provided for any of these medical supplies.

Based on the medical record, the prescription for the medical supplies would be considered both excessive and unnecessary. According to Dr. Wolf, medical supplies must be prescribed in the appropriate clinical context which was not the case for this claimant. Regardless of physical examination findings, Dr. Tadros felt comfortable treating this claimant with a physical therapy program. Just because a piece of durable medical equipment has potential utility does not equate it to medical necessity. There was no specific information as to how the medical supplies were necessary for the claimant within the context of a thoughtful treatment plan. There was no indication how these medical supplies would aid or alter the claimant's treatment plan or reduce the number of visits to the office.

When a respondent relies on a peer review in support of its defense that services were not medically unnecessary, the peer reviewer must provide a sufficient factual basis and medical rationale in support of its opinion, or the peer review may be afforded minimal weigh and the insurer's defense may fail. Jacob Nir, M.D. v. Allstate Ins. Co., 7 Misc.3d 544, 546-47 (Civ. Ct. Kings Co. 2005); 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).

According to Dr. Wolf, it appears the EMS/TENS unit was prescribed for pain and not for neuromuscular reeducation. An EMS/TENS unit for home use may be indicated for musculoskeletal pain when the claimant responded to an in-office trial. According to Electrotherapy for neck pain by Kroeling P, Gross A, et al, Cochrane Database Syst Rev 2013 Aug 26: (8), "*Very low quality evidence showed the modulated galvanic current, iontophoresis and electric muscle stimulation (EMS) were not more effective than placebo.*"

I agree with the Applicant that in this matter the Respondent's Peer Reviewer does not set forth a sufficient medical rationale and factual basis to establish how prescribing the device deviated from a medical standard of care for the treatment of the Assignor. Therefore Dr. Wolf assessment fails to support his conclusion that the EMS/TENS unit was medically unnecessary and the Applicant's claims for the EMS/TENS unit is awarded.

According to "Hydrotherapy. Review on the effectiveness of its application in physiotherapy and occupational therapy" by Dr. Craig W. Martin, 2004, "*high level evidence suggests that hydrotherapy is not effective in treating chronic low back pain.*" There is no clinical evidence to suggest how this medical supply would alter or enhance the clinical outcome for this claimant. Additionally, this medical supply was not used in the office setting prior to it being prescribed for home use. According to Superficial Heat and Cold, emedicine from Klein and Hommer, updated: Sep 03, 2019 regarding hydrotherapy: "*Uses of hydrotherapy may include the treatment of infected draining*

wounds; contrast bath can be used as therapeutic hyperemia for management of rheumatoid arthritis or sympathetically mediated pain." The claimant in this case did not have adequate indication for the use of hydrotherapy.

I agree with the Applicant that the Respondent's Peer Reviewer does not set forth a sufficient medical rationale and factual basis to establish how prescribing the hydrotherapy whirlpool deviated from the acceptable medical standard of care for the treatment of the Assignor. Dr. Wolf's assessment focuses on its use for chronic pain but fails to address its use acceptance for the treatment of acute pain, nor does he offer any opinion that the Assignor was in the chronic stage of low back pain Therefore Dr. Wolf assessment fails to support his conclusion that the hydrotherapy whirlpool was medically unnecessary and the Applicant's claims for the hydrotherapy whirlpool unit is awarded.

Dr. Wolf further notes that an infrared heat lamp is an antiquated heating modality which in the unsupervised home setting could cause burns. Infrared lamps should be utilized only under supervision and should not be dispensed for home use. According to Shankar, K and Randal, K, Therapeutic Physical Modalities, Hanley and Belfus, 2002, pp 12-14, Infrared lamps may burn the skin, cause excessive drying, and cause skin pigmentation changes. Dr. Wolf further asserts that the massage using mechanical devices loses the 'laying of hands' effect and often not as effective as manual massage. According to Ann Intern Med. 2017; 166:514-530. doi: 10.7326/MI16-2367, Noninvasive Treatments for Acute, Subacute, and Chronic Low Back Pain: A Clinical Practice Guideline From the American College of Physicians by Qaseem, Wilt, McLean and Forciea, "*Low-quality evidence showed that a combination of massage plus another intervention (exercise, exercise and education, or usual care) was superior to the other intervention alone for short term pain in patients with subacute to chronic low back pain.*"

I agree with the Applicant that in this matter the Respondent's Peer Reviewer does not set forth a sufficient medical rationale and factual basis to establish how prescribing these devices deviated from a medical standard of care for the treatment of the Assignor. Dr. Wolf assessment fails to support his conclusion that the heat lamp and massager was medically unnecessary and the Applicant's claim for these devices is awarded.

DOS: 1/29/24

The Applicant was provided with a cervical traction unit with pump (CTU) and a lumbar-sacral orthosis, sagittal control, and custom fitted (LSO) on 1/29/24. The Applicant provides two prescriptions signed by Dr. Sari Ramzan. One is dated 2/6/24 and a second dated 1/16/24. The Respondent denied reimbursement based on a peer review by Dr. Robert E. Costello, DC dated 3/25/24.

Dr. Costello provides a history of the Assignor as a 38-year-old male who was the restrained driver of a motor vehicle that was involved in a collision on 12/12/23. There was no reported loss of consciousness. Following the accident, he was evaluated at a hospital where he was examined, x-rays were reportedly performed, and he was released without admission. He consulted and initiated treatment with Sari Ramzan, D.C. of

Brooklyn BodyWorks Chiropractic, P.C. who, after performing a physical examination on 1/16/24, diagnosed cervicalgia, cervical and lumbosacral radiculopathy, sprain of joints and ligaments of other parts of neck, pain in thoracic spine, sprain & strain, thoracic region, low back pain and sprain of ligaments of lumbar spine. Chiropractic adjustments were recommended for 4 weeks at 3 - 4 times per week followed by 3 -4 weeks at 2- 3 times per week with monthly re-evaluations. Sari Ramzan, D.C. prescribed the cervical traction unit with pump and the lumbar-sacral orthosis, sagittal control, custom/fitted that were dispensed on 01/29/24.

Dr. Costello goes on to say that durable medical equipment should not be a routine part of an individual's conservative clinical management following traumatic vehicular injury. Each piece of equipment should be dispensed and be clinically indicated specifically by means of documented signs and symptoms. Additionally, each individual patient's needs require specific rationale and should be recorded within the clinical record. The medical equipment order form signed by Sari Ramzan, D.C. is in a checklist format strongly suggesting that the cervical traction unit with pump and the lumbar-sacral orthosis, sagittal control, custom/fitted were prescribed in a routine manner as opposed to being administered in accordance with patient-specific clinical circumstance. From a chiropractic quality management standpoint, their necessity is without the recommended, documented support.

As to the cervical traction unit, Dr. Costello notes that based on the Randomized Trial of Chiropractic Manipulation and Mobilization for patients with Neck Pain: Clinical Outcomes from the UCLA Neck-Pain Study Eric L. Hurwitz, D.C., Ph.D. published in the American Journal of Public Health October 2002, Volume 92, No. 10 physical medicine methods including traction have not been studied in sufficient detail to allow adequate assessment of their effectiveness. Conventional neck-pain treatments with little or no evidence to support their use include traction. Spinal traction is not recommended in treatment for patients with acute neck pain, a cervical spine symptom that Sari Ramzan, D.C. diagnosed the Assignor with. It has been demonstrated that the amount of traction that is needed to cause any effect on the vertebral column is beyond the ability of the paravertebral soft tissues to resist making static, invariable traction of no proven benefit. Consequently, the necessity for the cervical traction w/ pump dispensed on 1/29/24 cannot be established.

In an article Massage, Traction and Manipulation authored by J. Michael Wieting, D.O., MEd and Consuelo T. Lorenzo, M.D. dated 11/29/11 it is stated that "*practitioners who are receptive to empirical treatments may be amenable to the concept that traction may separate vertebrae and decrease the size of herniated discs thereby benefiting radiculopathy; however, no consensus has been reached among clinicians or researchers in this area". The article continues that "traction has enjoyed a long history of clinical acceptance based upon very little scientific understanding of its mechanism of action or efficacy.* In conclusion, the researchers state that "*given the difficulty of objective documentation of the benefits of traction, it is not surprising that there has been a reduction in its use.*" In a research report: Cervical Traction for Managing Neck Pain: A Survey of Physical Therapists in the United States authored by Timothy J. Madson, PT, MS, OCS and Jonathan H. Hollman, PT, PhD published in Journal of Orthopaedic & Sports Physical Therapy 2017 page# 200 "*systemic reviews provide*

inconclusive evidence to support traction as an intervention for patients who present with axial neck pain alone". "These studies report that the addition of traction does not change patient outcomes". Additionally, the authors cited Borman et al; that adults receiving "standard physical therapy" defined as hot packs, ultrasound therapy and an exercise program, and the other receiving the addition of mechanical traction concluded that "*there was no benefit from the addition of traction to standard physical therapy*" interventions.

According to Dr. Costello, the use of the lumbar-sacral orthosis, sagittal control, custom/fitted, as recommended and provided to the Assignor that was employed as either a preventative appliance or when utilized as a corset which purportedly decreases potential for the worsening of a soft tissue injury is not supported in recent peer-reviewed articles. Patients undergoing some type of active mobilization in a home exercise program tend to progress better with respect to reducing pain and regaining movement compared to patients utilizing a lumbar sacral support. Currently, because of conflicting evidence and the absence of high quality trials, there is no conclusive evidence to support the use of a back corset and/or support to prevent or reduce low back pain. Lumbar supports have not afforded any more protection than a correct ergonomic lift executed without a back brace. Several studies of pain and instability indicated that wearing an elastic lumbar orthoses improved the patient's feeling of stability although the corsets are unstable themselves and cannot stabilize a joint mechanically. According to the Guideline for the Evidence-Informed Primary Care Management of Low Back Pain 2009, "*Neither lumbar supports nor back belts appear to be effective in reducing the incidence of low back pain*".

The claimant was provided with the lumbar-sacral orthosis, sagittal control, custom/fitted on 1/29/24 presumably to reduce pain in the lumbar region primarily through the use of immobilization. Inherent in performing chiropractic spinal manipulations is primarily to mobilize individual vertebral segments, increase flexibility and facilitate circulation by decreasing paraspinal muscular spasm. There is no rationale to manipulate the spinal vertebral segments in-office while attempting to immobilize the spine outside the office. In the NonPharmacologic Management of Pain by Scott F. Nadler, D.O., supplement 8, volume 104, number 11 published November 2004: immobilization may lead to deleterious effects that may compromise treatment outcome such as muscle fiber atrophy, decreased proprioception and loss of range of motion. This loss may be a clinically significant problem in an individual who already has compromised muscle function. Patients undergoing some type of active mobilization in a home exercise program tend to progress better with respect to reducing pain and regaining movement compared to patients utilizing a LSO. Cited in an article entitled "Diagnosis and Treatment of Acute Lower Back Pain" authored by Brian A. Casazza, M.D. published in the American Family Physician February 15, 2012, 85 (4): pages 343-350; In general, no substantial benefit has been shown for the treatment of acute lower back pain with oral steroids, acupuncture, massage, traction, or lumbar supports. Dr. Costello goes on to say "*It is unclear whether the lumbar supports are more effective than no intervention or other treatments for acute lower back pain*". Finally, cited in Evidence-Informed Primary Care Management of Low Back Pain; Clinical Practice Guideline December 2015 - 3rd Edition-minor revision in 2017 page #2 "*Lumbar supports are not recommended for preventing low back pain.*"

I find Dr. Costello's peer review sufficient to set forth a factual basis and medical rationale in support of his opinion that the CTU and LSO were not medically necessary. Although Dr. Costello does raise issues regarding the efficacy of traction which alone may not be sufficient to support the argument that it should be viewed as medically unnecessary, he adds to his argument that spinal traction is not recommended in treatment for patients with the symptoms of acute neck pain reflected in the record of Dr. Sari Ramzan, DC and therefore it was not necessary for the treatment of this patient when prescribed. Dr. Costello further argues that as to the LSO that inherent in performing chiropractic spinal manipulations is the mobilization of individual vertebral segments, increase flexibility and facilitate circulation by decreasing paraspinal muscular spasm. There is no rationale to manipulate the spinal vertebral segments in-office while attempting to immobilize the spine outside the office. I find these arguments by Dr. Costello sufficient to support Respondent's argument that the CTU and LSO were not medically necessary.

When a respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the Applicant who must then present its own proof of medical necessity, 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); Park Slope Med. & Surgical Supply, Inc. v Travelers Ins. Co., 37 Misc 3d 19, 22 (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012), to establish by a preponderance of the evidence, that the service in issue was medically necessary. See Friedman v. Allstate Ins. Co., 2016 NY Slip Op 50390(U) (App Term 2d, 11th & 13th Jud Dists. March 18, 2016).

In support of its claim the Applicant submits a peer review rebuttal by Dr. Erica N. David-Park dated 7/3/25. Dr. David-Park notes that the Assignor was involved in the motor vehicle accident as a restrained driver sustaining multiple injuries, including injuries to his head, neck, lower back, mid-back, left shoulder and bilateral knee. Following the accident, the patient was seen in the hospital where he was evaluated, treated, had X-rays and was referred to outpatient care

Dr. David-Park notes that on 1/16/24, the Assignor was seen by Dr. Sari Ramzan for an initial chiropractic evaluation and treatment of his injuries with complaints of 9/10 radiating neck pain associated with stiffness and 9/10 radiating lower back pain associated with stiffness. Examination of the cervical spine revealed tenderness, muscle spasm, muscle guarding, taut bands, trigger points, subluxations, decreased range of motion and positive Shoulder Depression test, Cervical Distraction test, Jackson Compression test and Foraminal Compression test. Examination of the lumbar spine revealed tenderness, muscle spasm, muscle guarding, taut bands, trigger points, subluxation, decreased range of motion and positive Kemp's test, Straight Leg Raise test and Lasegue's test. The diagnoses were cervicalgia, radiculopathy of the cervical region, sprain of joints and ligaments of other parts of neck, lower back pain, radiculopathy of the lumbosacral region and sprain of ligaments of the lumbar spine. Therefore, the patient was recommended to receive chiropractic treatment. Based on the painful

clinical conditions of the patient, he was prescribed Cervical Traction Unit - with Pump and Lumbar-Sacral Orthosis, Sagittal Control, Custom/Fitted to use at home. The prescribed CTU and LSO were provided to the patient on 1/29/24.

According to Dr. David-Park, cervical traction helps to relax the muscles, which can significantly relieve pain and stiffness while increasing flexibility. It can alleviate pain from joints, sprains, and spasms. It's also used to treat neck injuries, pinched nerves, and cervical spondylosis. Cervical traction devices work by stretching the spinal vertebrae and muscles to relieve pressure and pain. Force or tension is used to stretch or pull the head away from the neck. Creating space between the vertebrae relieves compression and allows the muscles to relax. This lengthens or stretches the muscles and joints around the neck. These improvements may lead to improved mobility, range of motion, and alignment. This will allow you to go about your daily activities with greater ease. (Cervical Traction for Neck Pain; medically reviewed by Gregory Minnis, DPT, Physical Therapy - Written by Emily Cronkleton - Updated on July 30, 2019). "They identified cervical traction, combined with manual therapy and strengthening exercises, as a beneficial intervention for reducing pain and disability in patients with neck and neck-related arm pain (radiculopathy)." (Cervical Traction for Managing Neck Pain: A Survey of Physical Therapists in the United States, Journal of Orthopaedic & Sports Physical Therapy Published Online: February 28, 2017, Volume 47 Issue 3 Pages 200-208).

Dr. David-Park notes that as evident from the medical records, in this case, the patient was prescribed the CTU mainly based on the severity of his clinical conditions noted upon evaluation. Specifically, upon evaluation performed by Dr. Ramzan on 1/16/24, the patient had complaints of 9/10 radiating neck pain associated with stiffness along with positive clinical findings such as tenderness, muscle spasm, muscle guarding, taut bands, trigger points, subluxations, decreased range of motion and positive Shoulder Depression test, Cervical Distraction test, Jackson Compression test and Foraminal Compression test. I believe these findings directly indicate that this patient would benefit from traction therapy. The Foraminal Compression test (also known as Maximal Cervical Compression Test and Spurling's Test) is used during a musculoskeletal assessment of the cervical spine when looking for cervical nerve root compression causing Cervical Radiculopathy. "With a positive Spurling Test, the suspected diagnosis is a cervical nerve root compression commonly related to intervertebral disc pathology (e.g., herniation)." (Spurling Test Steven J. Jones; John-Mark M. Miller. Last Update: August 11, 2021.) Cervical traction is a treatment often used in physical therapy to help treat neck pain and cervical radiculopathy (pinched nerves). It involves gently stretching your neck and separating the disc and joint surfaces in your cervical spine (neck). Common diagnoses that may benefit from cervical traction include but are not limited to: Herniated or bulging discs in the neck, neck strains, neck arthritis, cervical muscle spasms and radiculopathy. 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. The cervical traction device is always used in conjunction with conservative treatment to speed up the recovery period.

As to the use of the LSO, Dr. David-Park notes that the cited article in the peer is for lower back pain, however, in this case, the patient was in his sub-acute stage of injury.

Hence, the cited article should be held invalid to deny the medical necessity of the Lumbar-Sacral Orthosis, Sagittal Control, Custom/Fitted. It is also noted that the LSO is used in primary care to reduce pain and improve mobility. This device is ordered to facilitate healing following an injury by limiting improper mobility and muscular activity in the lumbar region. Lumbar Support is meant to provide even gentle support for distracted lumbar vertebrae, paraspinal muscles, and ligaments, to alleviate pain and prevent compression on intervertebral nerve roots, muscle spasm, and stiffness. The mechanism of support diminishes pain, spasm and allows musculature to relax in turn decreasing pain and allowing a greater painless range of motion. As evident from the medical records, on 1/16/24 there was 9/10 radiating lower back pain associated with stiffness. The positive objective findings including tenderness, muscle spasm, muscle guarding, taut bands, trigger points, subluxation, decreased range of motion and positive Kemp's test, Straight Leg Raise test and Lasegue's test. Hence, the patient was prescribed LSO to prevent further damage to the spine. The right brace can provide proper support, which will not only relieve pain but also help in the healing process. This device also provides the required support for offloading the strain experienced by these muscles. The brace will help to maintain the right posture, and restrict certain back movements, which are aggravating the condition and escalating the pain. Dr. David-Park cites literature supporting the use of LSO in the treatment of lower back pain conditions.

Dr. David-Park also notes a disagreement with Dr. Costello's understanding of the use of LSO in conjunction with conservative treatment. Both conservative treatment and LSO use different mechanisms to treat lower back pain. While conservative treatment helps promote joint mobility, the LSO restricts involuntary movements and helps to maintain the improvement achieved during in-office physical therapy and chiropractic sessions. Any treatment for the same problem that uses a different mechanism to alleviate the problem is usually considered complementary. Also, as discussed above it is important to understand that orthotic devices are different from total immobilization. It allows enough movement. Appropriately used, the LSO and general lumbar cushion provide proper support to better enable the patient to perform activities of daily living. These devices assume the role that otherwise is played by the patient's musculature. In case of injury to the spine or intervertebral structures, paravertebral musculature around the spinal column involuntarily contracts to restrict sharp movements. The restriction in movement originates not from an external device, but from the pain that starts the reflexory pathway restricting any movements that would result in further pain. The mechanism of this syndrome is analogous to an electrical short circuit. Braces support the spine and allow the muscles to relax and turn, thereby promoting movement, not restricting it. Many times, additional muscular support provides low back pain relief. The corset may also act as a reminder to avoid excessive low back motion and may help encourage proper body mechanics, such as good posture.

In this matter I am provided with the opinions of two medical experts, neither of which examined or treated the Assignor, but both are medical professional who are providing opinions as to the medical necessity of the devices in issue based on a review of medical records. The conflicting medical expert opinions presented by the parties raise an issue of fact as to the medical necessity of the surgery. 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). My finding as to the need for the CTU and LSO must be determined by which expert opinion is accepted based on a review of the medical records and authority cited. Based on my review of the medical record contained in the ECF and in consideration of the arguments made by the parties, I am more persuaded by the opinion of Dr. Costello who is a Doctor of Chiropractic Medicine and as such I find his opinion more persuasive to my factual assessment of the medical necessity for the prescribed devices made by a chiropractor. 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).

For the reasons noted above the Applicant is awarded its claim in the amount of $1,701,89.

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
	Kuman Medical Supply Inc.	**01/09/24 - 01/09/24**	**$1,701.89**	**Awarded: $1,701.89**
	Kuman Medical Supply Inc.	**01/29/24 - 01/29/24**	**$1,652.63**	**Denied**
Total			**$3,354.52**	**Awarded: $1,701.89**

B. The insurer shall also compute and pay the applicant interest set forth below. 06/07/2024 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.

08/30/2025
(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:
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Electronically Signed

Your name: Frank Marotta
Signed on: 08/30/2025