American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:		
Day-Op Center of Long Island Inc / **Applicant_ 1** (Applicant)	AAA Case No. AAA Assessment No. Applicant's File No.	412010010699 17 991 11821 10
- and -		
Geico Insurance Company (Respondent)	Insurer's Claim File No.	0216493850101012

ARBITRATION AWARD

I, John J. Talay, 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
☒07/08/10
and declared closed by the arbitrator on 7/8/10.

Jennifer Howard, Esq. participated in person for the Applicant.
John Faris, Esq. participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, **$1,611.96**, 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

Whether Applicant is entitled to No-Fault reimbursement for surgical reimbursement/facility fee. The amount in dispute is $1,611.96.

4. Findings, Conclusions, and Basis Therefor

BOTH SIDES WERE REPRESENTED BY COUNSEL. WRITTEN SUBMISSIONS FROM THE PARTIES WERE DULY FILED AND ARE CONTAINED WITHIN THE ELECTRONIC CASE FOLDER OF THIS FORUM. THEY ARE INCORPORATED, BY REFERENCE, IN THIS

DECISION. DOCUMENTS WILL BE IDENTIFIED SPECIFICALLY, AS NEEDED.

The within dispute springs from an underlying motor vehicle accident of May 28, 2009. A surgical procedure occurred on September 16, 2009 and the issue is questioned No-Fault reimbursement for this arthroscopy of the right knee and specifically, reimbursement for the facility fee. Applicant submits contemporaneous medical documentation sufficient to request reimbursement.

Applicant's position paper is dated March 1, 2010. It contains all relevant contemporaneous medical documentation regarding the operative procedure to this 36-year-old female driver whose vehicle was struck in a two-vehicle accident.

The surgery was performed by Dr. Richard L. Parker of South Nassau Orthopedic Surgeons. The surgery performed was an arthroscopy of the right knee and partial synovectomy.

In support of the claim, applicant presents assignment of benefits form, verified billing and contemporaneous medical documentation. Applicant seeks no-fault reimbursement for these services.

Applicant's position paper includes all documentation necessary for a prima facie case. Applicant's medical evidence is sufficient to establish a prima facie case of entitlement to the payment of No-Fault benefits for the disputed services. (Amaze Medical Supply, Inc. vs. Allstate Insurance Co., 3 Misc3d 133).

Pursuant to 11 NYCRR 65-4.5 (O) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

Respondent resists the claim in a position paper dated March 31, 2010. This arbitration is the result of a denial based on the independent peer review performed on 10/12/09 by Dr. Oliveto, orthopedic surgeon. As a result the respondent issued a timely NF-10 denial of claim, dated 10/22/09.

Respondent resists the claim based upon peer opinion. Let us turn to that report:

To meet its burden, at a minimum, respondent must establish a factual basis and medical rationale for its asserted lack of medical necessity which is supported by evidence of generally accepted medical/professional practices.

In order to establish the absence of medical necessity a peer reviewer must make a showing of the generally accepted medical/professional standards of care. Nir v. Allstate Insurance Co. 7 Misc. 3d 544 (2005).

In this surgical file review, Peer indicates that the surgery was actually performed by Dr. Francis Lanzone of the same medical group. He admits that there was an MRI of the right knee on 6/13/09 which reported showing abnormal signals consistent with a tear of the medial meniscus. The peer stated, "Based on a lack of significant findings that would require

immediate surgical intervention and the lack of documentation of an appropriate program of conservative treatment of the knee prior to the surgery, the right knee surgery was performed on the claimant on 9/16/09 should be disallowed."

Based on my evaluation of the peer review I find that it did attempt rebut the claimant's prima facie case. However, the applicant's records do refute Dr. Oliveto's position. A. Khodadadi Radiology v. NY Central Mutual Fire Ins. Co., 2006 NY Slip. Op 50 832U**,** 16 Misc.3d 131(A).

Applicant avers that there was physical therapy and that if Geico had provided those records to the doctor he would not have been so misinformed. In addition, this same doctor performed an IME on 9/14/09. There were positive orthopedic findings although there were negative neurological findings. These objective positive findings are significant no matter the lack of other records ass put forth by peer. It is noted that this IME occurred two days prior to the surgery itself and the doctor stated, "Based on today's examination, and review of the medical records available for review at this time, I see no need for causally related orthopedic surgery at present."

Given, my review of all the relevant medical records, I disagree with peer. I cannot say that the peer has sustained its burden of demonstrating lack of medical necessity for the surgery and related facility fee.

Having reviewed all the relevant evidence, I am more persuaded by the applicant's submission. I award reimbursement for the facility fee in the amount of $1,611.96.

Decision: Award for applicant in the amount of $1,611.96, together with statutory costs, interest and fees.

This award is in full disposition of all No-Fault benefit claims submitted to this arbitrator.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

Accordingly, the applicant is AWARDED the following:

A.

Benefits	Amount Claimed	Amount Awarded
Health Service Benefits	1,611.96	1,611.96
Totals:	$1,611.96	$1,611.96

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 03/08/2010, which is a relevant date only to the extent set forth below.)

The denial in this matter is timely issued. Principal amount awarded is $1,611.96. Interest shall be computed from the filing of the AR-1 or commencement of action, March 8, 2010, at a a rate 2% per month, simple, and ending with the date of payment of the award.

C. Attorney's Fees

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

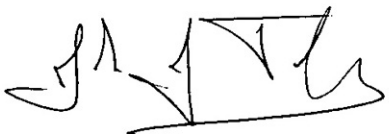
Attorney fee is payable on a per claimant basis in which benefits are paid pursuant to the case of LMK Psychological Services, PC vs. State Farm Mutual Automobile Ins. Co (2009 NY Slip Op 02481), Decided April 2, 2009.

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 New York
SS :
County of Nassau.

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



8/9/10
(Dated) (John J. Talay)

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.