American Arbitration Association
New York No-Fault Arbitration Tribunal

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| In the Matter of the Arbitration between: | | |
| Harmony Medical Care P.C. / **Applicant_ 1** (Applicant) | AAA Case No. | 412010005511 |
| | AAA Assessment No. | 17 991 09823 10 |
| - and - | Applicant's File No. | |
| **Geico Insurance Company** (Respondent) | Insurer's Claim File No. | 0150573050101058 |

## ARBITRATION AWARD

I, Richard M. Horowitz, Esq., 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
☒06/18/10
and declared closed by the arbitrator on 6/18/10.

Nadezhda Ursulova, Esq., participated by telephone for the Applicant.
Jamie Drantch, Rep., participated in person for the Respondent.

**2.** The amount claimed in the Arbitration Request, **$475.97**, was AMENDED and permitted by the arbitrator at the oral hearing. (Amendments, if any, set forth below).

**At the hearing of this matter, it was established that no further reimbursement was warranted for the physical therapy treatments rendered from 7/28/08 through 8/8/08, because Respondent had already paid the maximum units of physical therapy allowable pursuant to the fee schedule, and so Applicant amended its claim downward, from $475.97, to $365.21, for an office visit of 8/25/08, and four physical therapy treatments provided from the 8/18/08 through 8/29/08.**

STIPULATIONS were not made by the parties regarding the issues to be determined.

**3.** Summary of Issues in Dispute

**Whether an office visit of 8/25/08, and four physical therapy treatments provided from 8/18/08 through 8/29/08, as the result of an accident that occurred on 5/14/08, were necessary and reasonable expenses.**

**4.** Findings, Conclusions, and Basis Therefor

**I have reviewed the file with regard to this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.**

**I. The Claim**

**There is one claim at issue in this case; Applicant's amended claim in the amount of $365.21, for an office visit and four physical therapy treatments. It was established at the hearing that Respondent had timely denied this claim, based on independent medical examinations that were performed by Drs. Falvo, Solazzo, and Saperstein on 7/31/08, with an IME cut-off date of 8/11/08.**

**II. The Evidence**

**Applicant submitted in support of this claim an initial examination report of 5/19/08, 5 days after the accident; an initial physical therapy evaluation report; and follow-up reports of 6/25/08 and 7/25/08. According to the initial reports, Assignor, a 38-year-old female, was the driver of a vehicle involved in an accident, and sustained injuries to her neck, lower back and right shoulder. She was treated at the scene and brought by ambulance to Queens Hospital Center, where she was treated and released. Initial complaints included headaches, back pain and stiffness with radiation to the right shoulder, lower back pain with radiation to the middle back, and tingling sensations at the middle/lower back. On examination, there was mild cervical and lumbar tenderness with decreased range of motion of the neck in right and left lateral flexion, and neurological evaluation was within normal limits. The follow-up reports noted similar findings, with some improvement. Both of the follow-up reports of 6/25/08 and 7/25/08 include recommendations that the therapy continue at the frequency of 3/4 times per week.**

**According to the reports from the independent medical examiners, all of whom note the patient's subjective complaints of neck and back pain, and all of whom conceded that the injuries were caused by the underlying accident, Assignor's injuries had completely resolved, and that no further treatment was necessary. Yet, Dr. Falvo, the orthopedic independent medical examiner expressly noted right sided posterior paracervical tenderness and L4 vertebral spinous process tenderness on his examination. Dr. Saperstien, the acupuncturist, also expressly noted mild cervical and thoracolumbar paraspinal tenderness, and he also noted that at the end of the range of motion of the lumbar spine the patient reported discomfort. Yet, despite the fact that two of the three independent medical examiners arrived at positive findings pursuant to their examinations, all three concluded that the patient's injuries had completely resolved, and recommended that no further treatment was necessary.**

**III. The Decision**

**Based on a review of all the evidence, and the arguments of the parties at the hearing, Respondent has failed to establish the lack of medical necessity for the office visit and last four physical therapy treatments by a fair preponderance of the credible evidence. The fact that two of the three independent medical examiners made positive objective findings, but completely disregarded their own positive findings, along with the patient's subjective complaints of pain, while at the same time conceding that the underlying injuries were caused by the accident, renders their opinions that further treatment was not medically necessary less than persuasive. Furthermore, Applicant submitted follow-up reports from 6/25/08 and 7/25/08, both of which included positive findings and that recommended that treatment continue. Under these circumstances, Respondent has failed to establish the lack of medical necessity for the disputed office visit and treatment by a fair preponderance of the credible evidence, and the amended claim is granted.**

**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 | 365.21 | 365.21 |
| Totals: | $365.21 | $365.21 |

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 02/03/2010, which is a relevant date only to the extent set forth below.)

The interest rate shall be two percent per month, simple (i.e., not compounded), on a pro rata basis using a 30-day month. With respect to this claim, the insurer shall compute and pay Applicant interest computed from 2/3/10, the date the claim was received by the American Arbitration Association, to the date of the payment of the award, but excluding 2/3/10 from being counted within the period of interest.

C. Attorney's Fees

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

With respect to this claim for which compensation was awarded, Respondent shall pay Applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(e). Since the within arbitration request was filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11NYCRR 65-4.6(b).

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of New York.

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

7/7/10
(Dated) (Richard M. Horowitz, Esq.)

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.*