American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:		
Ridgewood Medical, PC / **Applicant_ 1**	AAA Case No.	412010005470
(Applicant)	AAA Assessment No.	17 991 08372 10
- and -	Applicant's File No.	
MVAIC		
(Respondent)	Insurer's Claim File No.	435346

ARBITRATION AWARD

I, Lori J. Ehrlich, 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: Claimant

1. Hearing(s) held on
☒06/01/10
and declared closed by the arbitrator on 6/1/10.

Nadia Ursolova, Esq. participated in person for the Applicant.
Craig Marshall, Esq. participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, **$338.00**, 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

In dispute are Applicant's bills in the sum of $338.00 for physical therapy services rendered to Applicant's assignor as a result of injuries allegedly sustained in an automobile accident on February 16, 2009.

Respondent has denied these bill based on independent medical examination and the issue presented is whether Respondent has proved that the services at issue were not medically necessary.

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing and entered into the ECF on June 1, 2010.

4. Findings, Conclusions, and Basis Therefore

Upon reviewing the evidence presented my award is in favor of the Applicant in the sum of $338.00. At issue are physical therapy services rendered to the Applicant, a seventeen year old male from June 11, 2009 to July 8, 2009. Applicant has set forth a prima facie case by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11th Jud. Dusts.]). Upon proof of a prima facie case by the Applicant, the burden now shifts to the insurer to prove that the services at issue were not medically necessary. (see Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

The bills at issue were denied based upon the independent medical examination conducted by Dr. Edward Toriello on May 21, 2009. At the time of the examination the claimant complained of right knee and right hip pain and reported receiving physical therapy treatment two to three times a week. Dr. Toriello examined the claimant, opined that the claimant revealed evidence of a resolved right knee contusion, resolved right hip contusion and resolved right wrist sprain, and concluded that no further orthopedic treatment was medically necessary.

The evidence submitted by the claimant consists of follow-up evaluations conducted by Dr. Gabinskaya on April 29, 2009, June 25, 2009 and August 4, 2009. At each of the examinations the claimant continued to complain of right knee pain and objective findings referable to the right knee were noted. At each of the follow-up evaluations, continued physical therapy was recommended. Applicant has also submitted physical therapy treatment notes for each of the dates of service at issue.

11 NYCRR 65-4.5(o)(1) provides that "The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. 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" Upon careful review of the evidence presented I find that Respondent has failed to prove that the services at issue were not medically necessary. Dr. Toriello observed the claimant on one occasion and did not review any of the claimant's medical records. Given that the claimant was evaluated by his treating physician prior and subsequent to the examination by the independent examiner and, given the documented subjective and objective complaints, I defer to the opinion of the treating physician in determining the course of treatment rendered. Accordingly, Applicant is awarded $338.00.

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	338.00	338.00
Totals:	$338.00	$338.00

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 Insurer shall pay interest at the rate of 2% per month, simple (not compounded),on a pro rata basis using a 30-day month. Interest shall be computed from 02/03/10 to the date of payment.

C. Attorney's Fees

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

The Respondent shall also pay the Applicant 20% of the benefits and interest awarded thereon, as an attorney's fee, in accordance with 11 NYCRR 65-4.6(e), but such fee shall not be less than $60 or more than $850. However, for all arbitration requests filed on or after April 5, 2002, 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(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 Westchester.

I, Lori J. Ehrlich, 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.

Lori Ehrlich

6/30/10
(Dated) (Lori J. Ehrlich, 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.