

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Excel Surgery Center, LLC  
(Applicant)

AAA Case No. 17-16-1039-4672  
Applicant's File No.

- and -

Geico Insurance Company  
(Respondent)

Insurer's Claim File No. 0532288900101013  
NAIC No. 35882

**ARBITRATION AWARD**

I, Burt Feilich, 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 02/27/2017  
Declared closed by the arbitrator on 02/27/2017

Walter Pisary, Esq. of counsel from The Law Offices of Hillary Blumenthal P.C.  
participated in person for the Applicant

Nicole Harrison, Claim Representative from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,762.32**, 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
  - a. Whether the ambulatory surgery center facility and anesthesia services rendered by applicant for the eligible injured person/assignor were reasonable and medically necessary for the treatment of injuries this patient sustained in the accident.
4. Findings, Conclusions, and Basis Therefor

I have reviewed all documents included in the ADR system consisting of the submissions made by the parties. No other additional documentation was submitted by either party at the time of the hearing.

This case involves a claim in the original amount of \$2,762.32 and concerns the issue of ambulatory surgery center facility and anesthesia services rendered by applicant on behalf of claimant for the diagnosis and treatment of injuries sustained in an accident that occurred on December 23<sup>rd</sup>, 2015. Respondent contends that the services rendered were not medically necessary on the basis of a peer review report. It also contends that applicant did not bill in accordance with the fee schedule and regulations.

Initially, according to First Amendment to Regulation 68-D, 11 NYCRR 65-4.5, the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Insurance Department regulations.

I have carefully reviewed the medical evidence submitted by the parties pertaining to claimant, a 37-year old woman who was the driver of a vehicle at the time of the accident, including the following: the initial examination report of Dr. Emil Stracar of Stracar Medical Services, PC, dated January 8<sup>th</sup>, 2016, and his followup progress reports dated January 26<sup>th</sup> and February 7<sup>th</sup>, 2016; an initial chiropractic evaluation by Sweetwater Chiropractic, PC, dated January 8<sup>th</sup>, 2016; an initial acupuncture evaluation report by Oleg Bazyenko, L.Ac., of BOB Acupuncture, PC, dated January 8<sup>th</sup>, 2016; an initial pain management evaluation by Dr. Ross Nochimson of Highlands Interventional Pain Management, LLC, dated March 16<sup>th</sup>, 2016; the Operative reports by Dr. Nochimson for a lumbar epidural steroid injection and epidurography performed on May 7<sup>th</sup>, 2016 at Excel Surgery Center, LLC, and for a cervical epidural steroid injection and epidurography performed on May 21<sup>st</sup>, 2016 at Excel Surgery Center, LLC; all facility and anesthesia reports and records for those Operations; trigger point injection records by Dr. Stracar for February 17<sup>th</sup>, 2016; the results of a cervical MRI taken on February 3<sup>rd</sup>, 2016 showing a herniated disc at C5-6 and a bulging disc at C4-5; the results of a lumbar MRI taken on February 10<sup>th</sup>, 2016 showing a bulging disc at L4-5; results of upper and lower extremity EMG/NCS testing performed by Dr. Stracar on February 17<sup>th</sup> and February 23<sup>rd</sup>, 2016 showing a left S1 radiculopathy; results of a left shoulder MRI taken on February 3<sup>rd</sup>, 2016 showing bone marrow edema, fluid in the AC joint and fluid in the subacromial and subdeltoid region or bursitis; results of fluoroscans taken by Dr. Stracar on January 21<sup>st</sup>, 2016; and daily physical therapy and acupuncture treatment records.

In defense of the claim, respondent submits the peer review report of Dr. Jason Cohen, a pain management specialist, dated June 27<sup>th</sup>, 2016. He had available all of the necessary reports and records to prepare his report. Dr. Cohen states that there was no medical necessity for the epidural steroid injection administered by Dr. Nochimson on May 7<sup>th</sup>, 2016. His review of the MRIs and x-rays submitted showed no evidence of nerve root impingement or foraminal stenosis that would justify the injection performed. There was also no evidence of any lumbar herniated discs, fibrosis or stenosis. Dr. Cohen states that the clinical examination performed by Dr. Nochimson nor the EMG/NCS testing performed showed a true radicular pain syndrome. According to Dr. Cohen, there is insufficient evidence of the efficacy of such injections for the type of injuries sustained by claimant. There is no proven benefit for lumbar epidural steroid injections for long-term pain relief. He cited to medical literature to support his opinion that the services claimed by applicant in this case were unnecessary for claimant.

In further defense of the claim, respondent also submits the orthopedic IME examination report of Dr. John Denton, dated April 19<sup>th</sup>, 2016. He was told that claimant was still receiving physical therapy, chiropractic and acupuncture treatments each at the rate of 3 times per week and that there was no change in claimant's symptoms. Claimant had present complaints of pain in her neck, lower back and left shoulder. There was no previous related medical history. Claimant had returned to work on a full time basis by the date of the IME examination. The nature of her employment was not listed. Dr. Denton's physical examination was entirely within normal limits. His diagnosis was resolved sprains and strains of the cervical and lumbar spine and left shoulder. There was no present orthopedic disability. He concluded that claimant had no further need for any orthopedic, surgery, injections, physical and massage therapy or any diagnostic testing services for any of the injuries sustained in the accident. This IME examination was not listed in respondent's denial of claim as being a basis for the denial of the services claimed in this case.

In further defense of the claim, respondent also submits the chiropractic IME examination report of Dr. Ron Amidror, dated April 19<sup>th</sup>, 2016. He was told that claimant was still receiving physical therapy, chiropractic and acupuncture treatments each at the rate of 3 times per week and that there was no change in claimant's symptoms. Claimant had present complaints of pain in her neck and lower back. He did not record any complaint about her left shoulder. There was no previous related medical history. Claimant had returned to work on a full time basis by the date of the IME examination. The nature of her employment was not listed. Dr. Amidror's physical examination was entirely within normal limits from a chiropractic perspective. His diagnosis was resolved sprains and strains of the cervical and lumbar spine. He made no diagnosis regarding claimant's left shoulder. There was no present chiropractic disability. He concluded that claimant had no further need for any chiropractic, massage therapy or diagnostic testing services for any of the injuries sustained in the accident. This

IME examination was also not listed in respondent's denial of claim as being a basis for the denial of the services claimed in this case.

After having reviewed all of the medical evidence and listening to the arguments of the parties, I find that respondent has met its burden of proving that there was no medical necessity for the lumbar epidural steroid injection and all ancillary services rendered in connection therewith on May 7<sup>th</sup>, 2016. In my opinion, the peer review report by Dr. Cohen was convincing that this claimant did not sustain the type of injuries for which a lumbar epidural steroid injection should be administered. When Dr. Nochimson first saw claimant on March 16<sup>th</sup>, 2016 there were no lower extremity radiating complaints and thus a lack of clinical evidence of a radiculopathy for which an epidural steroid injection might be considered. Also, the lumbar MRI did not show evidence of any herniated discs or nerve root impingement. Thus, based on the clinical findings and diagnostic test results, claimant had not sustained the type of lumbar injury for which an epidural steroid injection would be a proper treatment method. Also, the medical literature does not support the use of such an injection as being effective in terms of long-term pain relief. Consequently, I sustain respondent's denial of claim and find that there was no medical necessity for the lumbar epidural steroid injection and all ancillary services rendered in connection therewith on May 7<sup>th</sup>, 2016.

Therefore, my award is in favor of respondent, and the claim is denied in its entirety.

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 claim is DENIED in its entirety

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

03/01/2017

(Dated)

Burt Feilich

### **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:**  
ea3a283332eeefc7079a0aa06417d9d9

### **Electronically Signed**

Your name: Burt Feilich  
Signed on: 03/01/2017