

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Timur Hanan
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-16-1041-9680
Applicant's File No.	17555
Insurer's Claim File No.	0284931680101071
NAIC No.	35882

ARBITRATION AWARD

I, Debbie Kotin Insdorf, 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 04/17/2017, 07/10/2017
Declared closed by the arbitrator on 07/10/2017

Mitchell Shpelfogel from Benjamin M. Pinczewski, PC participated in person for the Applicant

Kevin Smith from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,157.33**, 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
Were the EMG/NCV studies performed by Applicant, and denied by Respondent based on the findings of an Independent Medical Examination, medically necessary?

4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for \$1,157.33 for EMG/NCV studies of the upper and lower extremities performed 11-02-15.

The Respondent issued a timely denial based on the findings of an Independent Medical Examination on 9-02-15. Benefits terminated 9-30-15.

On 9-02-15, an Independent Physiatric Examination was performed. Dr. Michael Russ wrote, "The claimant reports that on June 18, 2015, she was a back seat passenger of an automobile involved in a motor vehicle accident. Assignor states that she was wearing her seatbelt. She did not sustain any lacerations. She denies experiencing any loss of consciousness as a result of the accident. The claimant was taken by ambulance to Brooklyn Hospital, where she was evaluated, treated, and x-rays were performed of her left shoulder and right knee, which revealed no fracture. She was given Motrin and Tylenol. She was discharged that same day and was advised to rest... On June 22, 2015, Assignor reports that she began conservative treatment at a local medical facility, which included physical therapy. The treatment was initially at a frequency of three times per week and she continues treatment on the same basis presently. She reports that additional testing has been performed consisting of MRIs of the left shoulder, right wrist, and right knee, which revealed torn ligaments."

The fifty six year old Assignor complained to Dr. Russ of radiating neck pain, radiating low back pain and pain in the left shoulder, right wrist and right knee. Other than minimal tenderness to palpation over the dorsal muscles of the thoracic spine, the exam was normal.

The doctor's diagnoses were resolved cervical and lumbar spine sprain/strain; resolved sprain of the left shoulder, right wrist and right knee.

Dr. Russ concluded there was no need for further physical therapy, formal treatment, diagnostic testing, massage therapy, household help, medical supplies or special transportation. The Assignor reached an endpoint for formal care.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co., 196 Misc.2d 801,

766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply the facts of the case and only then may she properly conclude the services in issue were not medically necessary due to the provider's violation of the generally accepted medical standards.

On 10-01-15, an examination was performed by Dr. Timothy Hanan (Applicant herein). The Assignor's complaints included intermittent neck pain and paresthesia radiating down both arms, left shoulder pain, low back pain and right knee pain. The examination of the cervical spine revealed tenderness, positive Spurling test and decreased range of motion. The motor strength was 4/5 in the left shoulder, left wrist and left hand. It was 4/5 in the right shoulder. Sensation to soft touch was decreased along both forearms and hands.

The doctor's diagnoses included cervical disc derangement and cervical radiculopathy.

The doctor's treatment plan included EMG/NCV to rule out cervical radiculopathy and differentiate plexopathy and neuropathy as the Assignor still had neurological deficit.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I am unable to find that further treatment was unnecessary as of the date of the Independent Medical Examination. The Applicant's evidence was sufficient to refute the findings of the Independent Medical Examiner.

Accordingly, the Respondent's denials cannot be upheld. Applicant is awarded \$1,157.33.

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
	Timur Hanan	11/02/15 - 11/02/15	\$1,157.33	Awarded: \$1,157.33
Total			\$1,157.33	Awarded: \$1,157.33

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 09/01/2016, which is a relevant date only to the extent set forth below.)

Since the motor vehicle accident occurred after Apr.5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element until such action is taken. 11 NYCRR 65-3.9(c). In accordance with 11 NYCRR 65-3.9 (c), interest shall be paid on the claim (s), totaling\$1157.33from9-01-16, the date the arbitration was commenced.

- C. Attorney's Fees

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

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The insurer shall pay the applicant an attorney's fee, in accordance with 65-4.6(d). This amendment takes into account that there is an attorney fee of 20% of benefits plus interest with no minimum fee and a maximum attorney fee of \$1,360.00.

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

08/02/2017

(Dated)

Debbie Kotin Insdorf

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:
a893763c4facbe78c18f39aeaab6a8df

Electronically Signed

Your name: Debbie Kotin Insdorf
Signed on: 08/02/2017