

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

NY Medical Arts, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-16-1030-0318 |
| Applicant's File No. | 800.00282 |
| Insurer's Claim File No. | 0505072110101028 |
| NAIC No. | 22055 |

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 02/10/2017, 02/15/2017, 03/15/2017,
03/29/2017, 07/12/2017
Declared closed by the arbitrator on 07/17/2017

Eva Gaspari, Esq. from The Law Offices of Eva Gaspari, PLLC participated in person for the Applicant

Diana Gonzalez from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,966.15**, 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

The claimant was a 37 year-old male rear seat passenger of a motor vehicle that was involved in an accident on 4/5/15. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue are a 12/11/15 office visit, C6-C7 cervical epidural steroid injections (CESI) with epidurography and fluroscopy and a 1/8/16 office visit, L5-S1 lumbar epidural steroid injections (LESI) with epidurography and fluroscopy performed by Applicant. Respondent timely denied reimbursement based on 1/19/16 and 2/3/16 peer reviews by Mitchell Ehrlich, M.D.

4. Findings, Conclusions, and Basis Therefor

THIS HEARING WAS CONDUCTED USING THE ELECTRONIC CASE FOLDER MAINTAINED BY THE AMERICAN ARBITRATION ASSOCIATION. ALL DOCUMENTS CONTAINED IN THAT FOLDER ARE MADE PART OF THE RECORD OF THIS HEARING.

THE ARBITRATOR SHALL BE THE JUDGE OF THE RELEVANCE AND MATERIALITY OF THE EVIDENCE OFFERED.

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and 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. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

Upon proof of a prima facie case by the Applicant, the burden shifts to the insurer to prove that the services were not medically necessary. *A.B. Medical Services, PLLC v. Lumbermens Mutual Casualty Company*, 4 Misc.3d 86, 2004 N.Y. Slip Op. 24194 (App.Term 2nd and 11th Jud. Dists. 2004); *Kings Medical Supply, Inc. v. Country-Wide Insurance Company*, 5 Misc.3d 767, 2004 N.Y. Slip Op. 24394 (N.Y. Civ. Ct. Kings Co. 2004); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc.3d 128(A), 2003 N.Y. Slip Op. 51701(U) (App Term 2nd and 11th Jud. Dists. 2003). If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452; *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

The 2/10/17 hearing was scheduled in error and administratively adjourned. On 2/2/17 Applicant's counsel requested to have her client (Amr El Sanduby, M.D.) testify over the telephone at the hearing scheduled for 2/15/17 or if that was not acceptable to have the matter adjourned to a date when he could appear in person. On 2/2/17 I denied Applicant's counsel's request to have her client testify over the telephone but granted an adjournment. Despite this, the 2/15/17 hearing was not adjourned. The 2/15/17 hearing was continued for Applicant's in person testimony. Due to impending inclement weather all 3/15/17 New York No Fault hearings were scheduled for telephone conferences.

Therefore, on 3/13/17 I requested that the 3/15/17 hearing of this matter be rescheduled for 3/22/17 or 3/29/17 to provide Applicant the opportunity to provide in person testimony. The 3/29/17 hearing was continued as Respondent stated that they did not receive notice of the hearing which caused them not to appear. Dr. Sanduby was unable to appear at the 7/12/17 hearing.

The claimant was a 37 year-old male rear seat passenger of a motor vehicle that was involved in an accident on 4/5/15. The claimant reportedly injured his neck, right shoulder, low back, and right knee. There was no reported loss of consciousness. There were no reported lacerations or fractures. There was no reported emergency treatment sought or received. On 4/6/15 the claimant presented to Michael Jeanniton, D.C. and was initiated on chiropractic treatment. On 4/6/15 the claimant presented to JongHun Park, L.Ac of EMP Acupuncture, PC and was initiated on acupuncture. On 4/15/15 the claimant presented to Gamil Kostandy, M.D. who supervised Outcome Assessment Testing and initiated the claimant on physical therapy. The 4/17/15 right knee CT ordered by Dr. Kostandy produced an impression of mild osteoarthritic changes and a few scattered 2-5 mm bone islands throughout the distal femur and proximal tibia. The 4/17/15 cervical spine CT ordered by Dr. Kostandy produced an impression of mild osteoarthritic changes with disc space narrowing, degenerative endplate changes, endplate osteophytes and facet arthropathy; C4-5 disc bulge osteophyte complex with compression of anterior thecal sac and impingement of neural foramina; mild loss of C5-6 disc space height with a disc bulge osteophyte complex with compression of anterior thecal sac and impingement of neural foramina; and mild loss of C6-7 disc space height with a disc bulge osteophyte complex with compression of anterior thecal sac and impingement of neural foramina. The 4/17/15 right shoulder CT ordered by Dr. Kostandy produced an impression of no acute fractures, dislocations, avascular necrosis, lytic or blastic lesions or significant soft tissue abnormalities. The 4/17/15 thoracic spine CT ordered by Dr. Kostandy produced an impression of T10-11 disc bulge with compression of anterior thecal sac and T11-12 disc bulge with compression of anterior thecal sac. On 5/1/15 Bruce Jacobson, D.C. performed cervical and lumbar pf-NCS testing. On 5/4/15 Jean Baptiste Simeon, M.D. performed upper extremities and lower extremities EMG/NCV testing that suggested evidence of denervation in muscles innervated by right C5-C6 and L5-S1 nerve roots which are consistent with radiculopathy. On or before 6/8/15 Dr. Jeanniton prescribed durable medical equipment consisting of a cervical traction unit with pump and a K.O. adjustable knee joints rigid. On 10/13/15 the claimant underwent computerized range of motion and manual muscle testing. On 10/27/15 the claimant underwent physical capacity (NIOSH) testing. On 11/21/15 the claimant presented to Amr El Sanduby, M.D. of NY Medical Arts, PC (Applicant) where cervical and lumbar epidural steroid injections were discussed. On or before 12/2/15 Dr. Sanduby prescribed a compounded cream. On 12/11/15 Dr. Sanduby performed C6-C7 cervical epidural steroid injections (CESI). On 1/8/16 Dr. Sanduby performed L5-S1 lumbar epidural steroid injections (LESI). At issue are the 12/11/15 office visit, CESI with epidurography and fluroscopy and the 1/8/16 office visit, LESI with epidurography and fluroscopy.

During the 11/21/15 initial examination conducted by Amr El Sanduby, M.D. the claimant presented with complaints of "neck pain localized/radiating to the neck and right shoulder with numbness, tingling, and weakness VAS 7/10. Pain is sharp, dull,

shooting without redness/swelling/laceration/hematoma/rashes/scar formation. Low back pain localized/radiating to the right buttock and leg with numbness, tingling, and weakness VAS 8-10/10. Pain is intermittent, continuous, sharp, dull, shooting, burning without redness, swelling, laceration, hematoma, rashes, and scar formation. Patient is also complaining of pain in the right shoulder area. Patient describes the pain as intermittent, continuous, sharp, dull, shooting, burning without redness, swelling, laceration, hematoma, rashes, scar, joint effusion. Pain has been causing the patient to suffer from limitations with movement, lifting, pushing, pulling, bending, climbing, working, sleeping, prolonged sitting, and prolonged standing positions, and walking. The patient has not had any similar symptoms in the past as reported with the accident." Examination revealed "the C1 through C4 nerve roots are difficult to test, and lesions to these roots usually indicate a serious condition." Muscle strength was normal for age (5/5). Reflexes were 1+ right absent at the left Biceps (C5), Brachioradialis (C6), and Triceps (C7). Tinel's and Phalen's signs were negative bilaterally. Sensory examination was abnormal, revealing hypoesthesia/hyperesthesia to light touch and pinprick at the following dermatomal distribution; right C5-6. Reflexes were 1 + left absent right at the Patella (L4), Posterior Tibial (L4-L5), Calcaneal tendons (S1). Babinski sign was normal. Sensory exam was normal to light touch and pinprick sensation using a pinwheel of the lower extremities. Examination of the cervical spine revealed mild to moderate tenderness, and pain as well as mild to moderate paraspinal muscles spasm, and straightening of cervical lordosis at bilateral C3-4-5-6-7. Foramina compression test (Spurling's), Lhermitte's test (head bending), Vertebral artery motion test (head shaking), and Valsalva's test (space occupying lesions) were normal. Range of motion was mildly restricted in all planes. Examination of the thoracic spine revealed mild tenderness, pain, and paraspinal muscles spasm at the T1-12 levels. Range of motion was normal for flexion, extension, and rotation. Examination of the lumbar spine revealed bilateral mild to moderate tenderness, and pain at and above the level of L5, paraspinal muscles spasm, and straightening of the lumbar lordosis. Range of motion was decreased for flexion, extension, rotation, and bending. Range of motion of the lumbar spine was decreased in all directions secondary to pain, and/or muscle spasm. Straight leg raise was positive bilaterally at 45°. Dr. Sanduby's diagnostic assessment was cervical disc disease, cervical radiculopathy, lumbar disc disease, lumbar radiculopathy, musculoskeletal muscle spasm of the cervical, thoracic lumbar paraspinals, post traumatic strain/sprain of the cervical spine, post traumatic strain/sprain of the lumbar spine, and R/L shoulder sprain.

Respondent timely denied the 12/11/15 CESI with epidurography and fluroscopy and the 1/8/16 LESI with epidurography and fluroscopy based on the 1/19/16 and 2/3/16 peer reviews by Mitchell Ehrlich, M.D. that will be discussed together. After reviewing the claimant's history, treatment, and medical records, Dr. Ehrlich summarizes the claimant "came under the treatment of Dr. El Sanduby on 11/21/2015. He was complaining of neck pain radiating to the right shoulder with numbness and back pain radiating to the right leg with numbness. He was having pain in the right shoulder and right knee. Examination reported tenderness and decreased range of motion in the neck and back. There was report of altered sensation in the right C5-6. Strength was grossly normal. Reflexes were unremarkable. Injections were recommended." In regard to the CESI, Dr. Ehrlich opines "based upon review of the medical records and the medical guidelines for appropriateness of the services in question, I have come to the

determination that the standard of care for medical necessity of the cervical epidural steroid injection with epidurography and fluoroscopy has not been met. This is because the physical examination did not reveal significant radiculopathy. The imaging study of the cervical spine did not reveal post-traumatic lateralizing disc pathology. Without those key indicators, there was no causally-related reason for an epidural injection. New York State Workers' Compensation Board New York Neck Injury Medical Treatment Guidelines D.3.a.i Cervical ESIs are not effective for cervical axial pain or non-radicular pain syndromes and they are not recommended for these indications. They are not recommended as treatment for any nonacute axial neck pain without a radicular component." In regard to the LESI, Dr. Ehrlich opines "based upon review of the medical records and the medical guidelines for appropriateness of the services in question, I have come to the determination that the standard of care for medical necessity of the lumbar epidural steroid injection with epidurography and fluoroscopy has not been met. This is because the physical examination did not reveal significant radiculopathy. There were no radicular complaints. There were no radicular findings. There was no imaging study with correlative lateralizing disc pathology. Without those key indicators, there was no causally-related reason for an epidural injection. New York State Workers' Compensation Board New York Mid and Low Back Injury Medical Treatment Guidelines 3rd Edition D.6.b Lumbar/Transforaminal/Epidural Injections Recommendations: ESI is not recommended for acute or non-acute back pain in the absence of significant radicular symptoms. ESI is not effective for lumbar axial pain or non-radicular pain syndromes and they are not recommended for this indication."

In this matter, Applicant did not submit a letter of medical necessity or rebuttal. Instead, Applicant relies on the submitted medical reports. I have reviewed all of these reports which document radicular complaints and radicular findings. The 4/6/15 initial chiropractic examination documented complaints of radiating neck pain with associated numbness and tingling and radiating low back pain. The 5/1/15 examination preliminary to pf-NCS testing by Bruce Jacobson, D.C. indicated that the claimant had neck pain radiating right shoulder/arm/hand/fingers with associated numbness. Sensory examination indicated hypoesthesia right C6 dermatome. Reduced muscle strength (4/5) right deltoid, right triceps, and right tibias anterior was also noted. The cervical and lumbar pf-NCS testing performed the same day produced abnormal results. The 5/4/15 examination preliminary to EMG/NCV testing conducted by Jean Baptiste Simeon, M.D. indicated radiating neck pain with associated numbness and tingling and radiating low back pain. Examination revealed decreased muscle tone in right upper extremity. There was reduced manual muscle strength and hypoesthesia in the C5-C6 dermatome and right L5-S1 dermatome. The EMG/NCV testing performed the same day suggested evidence of "denervation in muscles innervated by right C5-C6 and L5-S1 nerve roots which are consistent with radiculopathy." The 11/21/15 initial examination conducted by Amr El Sanduby, M.D. documented complaints of "neck pain localized/radiating to the neck and right shoulder with numbness, tingling, and weakness VAS 7/10." Sensory examination was "abnormal, revealing hypoesthesia/hyperthesia to light touch and pinprick at the following dermatomal distribution. Right C5-6." Dr. Sanduby's diagnostic assessment included cervical and lumbar radiculopathy. Contrary to Dr. Ehrlich's contention the claimant consistently complained of radicular pain and the

various clinical tests performed by Dr. Sanduby confirmed this finding. Therefore, Respondent's denial predicated on the basis of lack of medical necessity is not sustained and Applicant's claim is granted.

Accordingly, Applicant is awarded \$1,966.15.

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 |
|---------|---------------------|---------------------|--------------|---------------------|
| | NY Medical Arts, PC | 12/11/15 - 01/08/16 | \$1,966.15 | Awarded: \$1,966.15 |
| Total | | | \$1,966.15 | Awarded: \$1,966.15 |

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 03/10/2016, which is a relevant date only to the extent set forth below.)

Interest runs from 3/10/16 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of \$1,360."

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

08/11/2017
(Dated)

Charles Blattberg

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:
6a0477d1fe6ae1c94bf2bcac2a9530e0

Electronically Signed

Your name: Charles Blattberg
Signed on: 08/11/2017