

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Armengol Medical PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1030-0595
Applicant's File No.
Insurer's Claim File No. 0534188750101022
NAIC No. 35882

ARBITRATION AWARD

I, Mary Anne Theiss, 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 08/15/2017
Declared closed by the arbitrator on 08/15/2017

Frank S. Patruno, Esq. from Frank S. Patruno, Esq. participated by telephone for the Applicant

Jamie Orlando, Esq. from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, \$ **3,227.06**, 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

Whether the Claimant's failure to appear for an Independent Medical Exam was justified.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR §65-4 (Regulation 68-D), §65-4.5(o)(1), the arbitrator shall be the judge of relevance and materiality of evidence offered, and strict conformity of 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.

The Claimant was in an automobile accident, on June 20, 2015. The arbitration centers around two bills, one for \$182.18 for an office visit, and the second for \$3,044.88, which is for an EMG and was denied, based on a peer review.

In regard to the bill for \$182.18, this was denied based on failure to attend an examination under oath. There is no proof of mailing.

Denial of receipt, standing alone, is insufficient to rebut the presumption of receipt of a verification request established by the insurer's proof of mailing, especially where the addressee does not provide a sufficiently detailed showing of its own procedures in retrieving, opening, and indexing its mail and in maintaining its files on existing claims. E4 Services, Inc. v. Lincoln General Ins. Co., 43 Misc.3d 136(A), 988 N.Y.S.2d 522 (Table), 2014 N.Y. Slip Op. 50678(U), 2014 WL 1686432 (App. Term 1st Dept. Apr. 29, 2014).

In regard to the EMGs of the four extremities, in the amount of \$3,044.88, this was denied, based on a peer review that was done by Terrence McAlarney, M.D., a neurologist. Dr. McAlarney wrote a report dated October 1, 2015. He indicated that the Claimant was involved in a motor vehicle accident on June 20, 2015. The Claimant treated with acupuncture, physical therapy, chiropractic manipulation and an MRI of the cervical spine was done, on July 7, 2015, which was normal.

The Claimant had lumbar epidural steroid injections, on August 9, 2015, and had four limb EMG/NCVS testing on August 12, 2015. Dr. McAlarney said that the Claimant had clinically obvious and specific radiculopathies. There was no differential diagnosis to investigate

with the EMG/NCVS testing. He noted that the testing may be useful, at times, to help confirm a clinically tentative diagnosis. In this case, the diagnosis is obvious and specific and did not require the testing. He indicated the more appropriate test would have been MRIs of the spine to evaluate structural lesions compressing the neural tissue. The MRIs in this case had already been performed. He stated that the EMG/NCVS testing is a supplement to, not a replacement for, a careful medical history, citing certain references. The referral was August 3, 2015, whereas the injury was June 20, 2015.

After a careful review of the records, it does not indicate why the exam was ordered, and there is no rebuttal to the physician's peer review. I find that the denial for the EMG/NCVs was justified; however, the denial for the two bills, in the amount of \$182.18 for failure to attend an examination under oath, was not justified.

I want to thank the parties for taking the time to prepare their case.

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
	Armengol Medical PC	08/12/15 - 08/12/15	\$3,227.06	Awarded: \$182.18
Total			\$3,227.06	Awarded: \$182.18

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 03/11/2016, which is a relevant date only to the extent set forth below.)

The denials were not late, so statutory interest applies.

- C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's in accordance with 11 NYCRR 65-4.6(d). 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). Accordingly, the insurer shall pay the applicant an attorney's fee in accordance with newly promulgated 11 NYCRR 65-4.6(d). This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$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 Madison

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

08/30/2017
(Dated)

Mary Anne Theiss

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:
1d9407126ea5a6444dded041f83fa2e9

Electronically Signed

Your name: Mary Anne Theiss
Signed on: 08/30/2017