

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Radiology Works, PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-16-1041-6528
Applicant's File No.	TG-RW-370
Insurer's Claim File No.	0120836550101101
NAIC No.	35882

**ARBITRATION AWARD**

I, Ellen Cutler-Igoe, 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 08/04/2017  
Declared closed by the arbitrator on 08/04/2017

Mark Kosofsky, Esq. from Palumbo & Associates, PC participated in person for the Applicant

Meghan Griffin, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,617.46**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$1,414.40 to reflect adherence to fee schedule applications.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The issue in dispute is whether Applicant met its burden of proof to establish the medical necessity for a cervical spine and right shoulder imaging studies performed by Applicant on August 22, 2013. Respondent timely denied payment predicated upon a peer review by a Dr. Bazos.

#### 4. Findings, Conclusions, and Basis Therefor

All submissions in the Electronic Case File as of the award date were reviewed and incorporated into the record for this decision.

Assignor, a 61 year old female, was injured in a motor vehicle accident on July 3, 2013 while a restrained driver of the vehicle. Reported symptomatology included pain to her neck and right shoulder. On July 29, 2013, Assignor presented to a Dr. John Handago for an evaluation. Examination of the cervical spine and right shoulder revealed decreased range of motion with spasm, positive O'Brien's test, Supraspinatus sign and Impingement of the rotator cuff. Assignor was diagnosed with cervical HNP with right shoulder rotator cuff tendon tear. Dr. Handago recommended Assignor participate in a physical therapy conservative care program and referred Assignor for imaging studies of the cervical spine and right shoulder. MRI of the cervical spine revealed straightening of cervical lordosis reflecting muscle spasm, disc bulge at C3-C5 levels effacing subarachnoid space resulting in bilateral neural foramen stenosis with unvertebral spurring and central disc herniation at C6-C7 level impinging upon the thecal sac and narrowing the subarachnoid space. MRI of the right shoulder revealed supraspinatus tendinopathy with bursal surface fraying most pronounced anteriorly with infraspinatus calcific tendinitis and superimposed partial articular tear and feathery edema centered in the myotendinous junction and acromioclavicular arthropathy narrowing the rotator cuff outlet. Applicant administered the aforesaid imaging studies though was timely denied payment by Respondent predicated upon a peer review by a Dr. Andrew Bazos. Dr. Bazos posited that the cervical spine study was not medically necessary as there was no evidence of neurological deficits, no plain film Xray indicating bony pathology and no indication of Assignor's response to a complete and aggressive course of conservative care. In reference to the right shoulder imaging study, Dr. Bazos denoted that individuals with shoulder pain should attempt a minimum of three months of nonsurgical treatment prior to undergoing any type of advanced diagnostic imaging unless there was an indication of significant pathology present upon the initial examination.

Applicant relied on a rebuttal report by a Dr. Michael Tamburo wherein Dr. Bazos's recommendations to disallow payment was delineated and negated. An addendum to the peer review report confirmed Dr. Bazos's initial findings although acknowledged Dr. Tamburo's medical opinions without additional credible medical authority to support his recommendation to disallow payment.

No other issues but for the medical necessity for performance of the cervical spine and right shoulder imaging studies in the amount of \$1,415.40 were presented for review.

### **Legal Analysis and Conclusion**

An Applicant establishes its prima facie showing of an entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the Respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S. 2d 564 [2d Dept. 2004] Therefore, through its submissions, Applicant met its initial burden of proof. The burden then shifts to the insurer to show lack of medical necessity. Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co., 3 Misc 3d 608, 777 N.Y.S. 2d 241, 2004 NY Slip Op. 24034 [Civ. Ct. Kings Co. 2004], aff'd., 3d 8 Misc. 3d 1025 [2005], Elm Medical P.C. v. American Home Assurance Co., 2003 Slip Op. 51357U 2003 N.Y. Misc. LEXIS 1337 [Civ. Ct., Kings Co., 2003]; Fifth Avenue Pain Control Ctr. v. Allstate Ins. Co., 196 Misc. 2d 801, 766 NYS2d 748 [Civ. Ct., Queens Co. 2003]

If a denial is predicated on a peer review or independent medical examination, the expert is required to provide a factual basis and medical rationale to support his opinion that a service is not medically necessary. Delta Diagnostic Radiology, PC v. Progressive Ins. Co., Misc. 3d 142(A), 880 N.Y.S. 2d 223 [App. Term 2d & 11<sup>th</sup> Dists. Dec. 3, 2008]; Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc. 3d 975; Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 [App. Term 2d & 11th Dists. Sept. 3, 2008] A.B. Medical Services v. Geico Ins. Co., 2 Misc 3d 26 [App Term 2d and 11th Jud Dists, 2003]

The issue of whether treatment is medically unnecessary cannot be resolved without resorting to a meaningful medical assessment Kingsbrook Jewish Med. Ctr v. Allstate Ins. Co., 61 AD3d 13 [2d Dept 2009] Once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, Applicant must rebut it or succumb. Bedford Park Med. Practice P.C. v American Transit Tr. Ins. Co., 8 Misc. 3d 1025 (A), 2005, 2005 NY Slip Op 51282 citing Bauman v Long Island Railroad, 110 AD2d 739, 741, [2d Dept 1985]. As a general rule, reliance on rebuttal documentation will be weighed in light of the documentary proofs and arguments presented at the arbitration. However, a rebuttal opinion from a non-treating doctor should include a delineation of the relevant medical records that provided the factual basis and/or medical rationale for rebutting the otherwise adequate evidence from [the insurer's] peer review expert.

Upon a thorough review of the evidence submitted and position statements presented at the hearing, it is this Arbitrator's determination that Applicant's claim be granted deference. In this regard, Assignor's referral for the imaging studies generated by a medical provider integral to his treatment plan and protocol for Assignor takes precedence.

Accordingly, for the foregoing reasons, Applicant is awarded payment in the amended amount of \$1,415.40.

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	Amount Amended	Status
	Radiology Works, PC	08/22/13 - 08/22/13	\$1,617.46	\$1,415.40	Awarded: \$1,415.40
Total			\$1,617.46		Awarded: \$1,415.40

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 08/24/2016, which is a relevant date only to the extent set forth below.)

The Respondent shall pay the Applicant the amount of interest computed from the date the AR-1 was deemed filed with the American Arbitration Association, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(e).

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).

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

09/02/2017  
(Dated)

Ellen Cutler-Igoe

**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:**  
997294f14adbc08bf5aede5ca305997f

### Electronically Signed

Your name: Ellen Cutler-Igoe  
Signed on: 09/02/2017