

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

East Flatbush Medical PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1047-1853

Applicant's File No.

Insurer's Claim File No. 0535338490101019

NAIC No. 35882

ARBITRATION AWARD

I, Elyse Balzer, 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: SJ

1. Hearing(s) held on 11/27/2017
Declared closed by the arbitrator on 11/27/2017

Abraham Meir, Esq from The Geller Law Group PC participated in person for the Applicant

Alison Chulis, Esq. of Printz & Goldstein from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,739.36**, 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 accident happened on 10/2/15.

The claim is for lower EMG/NCV performed on 11/4/15.

The issue is whether respondent has proven the lack of medical necessity of lower EMG/NCV testing based on a peer review.

All the documents maintained in the electronic case folder of the AAA, on the Modria website, for this case were reviewed.

4. Findings, Conclusions, and Basis Therefor

The 23 year old male injured person SJ was involved in an auto accident as a driver on 10/2/15. The accident happened on Utica Avenue, between Church & Snyder Avenues, in Brooklyn, NY.

On that same date SJ was seen at applicant's facility by Dr. Brij K. Mittal, MD, the owner of applicant PC. It was noted that SJ's chief complaint was of intermittent & radiating low back pain. Dr. Mittal ordered physical therapy 3-4 times a week, chiropractic treatment, computerized range of motion & muscle testing, PFNcS testing, kinesio taping, Physical capacity testing, acupuncture treatment, a neurological consultation, DME (water circulating cold/heat pad), and a lumbar MRI.

On 11/4/15 Dr. Jean Baptiste Simeon MD, an internist, examined SJ and performed the disputed lower EMG/NCV studies. This was Dr. Simeon's initial evaluation of SJ. At this exam, SJ complained of injuries to the low back from the subject MVA. SJ was receiving PT/chiropractic/acupuncture treatment.

Dr. Simeon's report notes, on a preprinted form, that SJ had intermitted low back pain, with a pain rating of 6-7 on a 10 point scale; which increased with bending over, and prolonged sitting & standing; and which did not radiate. SJ's past medical history was positive for gynecometia. SJ did not miss any time from work due to the accident. SJ was 6'1" and 300 lbs.

The physical exam of 11/4/15 was noted on the form to show: moderate tenderness in the thoracic spine; decreased range of motion in the lumbar spine; moderately restricted active & passive range of motion in the lumbar spine on flexion, extension & bilateral lateral bending; moderate spasm/tenderness bilaterally in the lumbar spine; moderate tenderness at L3-L5-S1; a positive SLR on the right & left sides at 45 degrees; decreased range of motion in the right hip & thigh; negative Homan's sign; no muscle atrophy; decreased muscle tone in the legs; slight decrease in muscle strength in right and left hips; normal reflexes; normal sensation, except for hypoesthesia in the right L4-5-S1 dermatome. No MRI testing was noted.

Dr. Simeon's diagnostic impression was: lumbar sprain; lumbar intervertebral disc displacement/herniation; lumbago; thoracic or lumbar neuritis or radiculitis/radiculopathy; lumbosacral sprain.

The lower EMG/NCV test results showed signs of denervation in muscles innervated by left L5-S1 nerve root which was consistent with radiculopathy.

Respondent paid for the exam of 11/4/15, but denied payment for the lower EMG/NCV testing based on a peer review, dated 12/7/15, of Dr. Isandr Dumesh, MD.

Applicant submitted a rebuttal from Dr. Simeon.

Both parties submitted addendums from their respective physicians.

My reading of the proof shows that Dr. Simeon's recounting of the facts is inaccurate.

When SJ was 1st examined on 10/2/15, the date of the accident he complained of radiating pain; when he was seen by Dr. Simeon 11/4/15 SJ did not complain of radiating pain.

This indicates that the conservative care being received by SJ had improved his condition. It also indicates that there was no radiation of pain at the time the testing was performed, contrary to Dr. Simeon's assertion.

Although Dr. Simeon's clinical exam results differ from the exam results of 10/2/15, the primary & most material fact extracted from these clinical exams is that SJ improved and did not have radiating pain into his lower extremities on 11/4/15.

The reasoning set forth in the peer review is persuasive on the lack of medical necessity for lower EMG/NCV testing. The rebuttal and addendum from Dr. Simeon is not persuasive in any regard, primarily due to the factual inaccuracy of the foundation of his opinion.

Based on the above, I find that respondent has proven the lack of medical necessity of lower EMG/NCV testing and that applicant has failed to rebut that showing. Applicant's claim is denied.

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 Westchester

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

11/29/2017

(Dated)

Elyse Balzer

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:
806489794dab7dc82185dc53a82a924b

Electronically Signed

Your name: Elyse Balzer
Signed on: 11/29/2017