

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Island Ambulatory Surgery Center
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-16-1040-6730

Applicant's File No.

Insurer's Claim File No. 0177583620101040

NAIC No. 22055

ARBITRATION AWARD

I, Evelina Miller, 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: UG

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

Nurseda Kucukkarca Esq from Revaz Chachanashvili and Associates PC participated by telephone for the Applicant

Jaime Dranch (claims) from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,226.25**, 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 Applicant established entitlement to No-Fault compensation for facility fees associated with Cervical facet block injections performed on Assignor.

Whether Respondent made out a prima facie case of lack of medical necessity, and if so, whether Applicant rebutted it.

4. Findings, Conclusions, and Basis Therefor

Applicant was represented by Nurseda Kucukkarca Esq., who presented oral arguments and relied upon documentary submissions. Jaime Dranch (claims), appeared on behalf of Respondent and presented oral arguments and relied upon documentary submissions. I have reviewed the submissions contained in MODRIA. These submissions are the record in this case.

The disputes arise from the underlying motor vehicle accident of June 24, 2015, in which the Assignor (UG), a 27-year-old-female was the driver. After the accident patient was taken to Elmhurst Hospital where she was treated and released. Thereafter, patient sought private medical attention and was eventually evaluated by Dr. Leonid Reyfman. Patient presented with complaints of headaches, pain in the neck and upper back. Patient was recommended to undergo conservative care. Eventually, patient was referred for cervical facet block injections which were performed on 6/1/16. The bill in dispute is for facility fees associated with cervical branch block injections performed on Assignor on 6/1/16.

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and 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 Co.*, 5 A.D.3d 742, (2d Dept., 2004).

Applicant's proof is also in Respondent's denials, which acknowledged receipt of the bill. Since Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits, the burden then shifts to the Respondent to demonstrate a lack of medical necessity for the items at issue. See, *Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co.*, 8 Misc 3d 1025 A (2005).

On July 1, 2016, Respondent issued a timely denial for facility fees associated with cervical facet block injections performed on Assignor on 6/1/16 based on a peer review by Dr. Jason Cohen performed on 6/29/16. Upon his review of the records, Dr. Cohen determined that there was no medical necessity for the injection at issue.

Medical Necessity:

A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. *Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co.*, 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ.Ct., New York County, 2004); *King's Med. Supply Inc. v. Country Wide Ins. Co.*, 5 Misc. 3d 767, 783 N.Y.S. 2d 448.

Once Respondent submits an IME report or peer review that has a sufficient factual basis and medical rationale, then the courts have routinely found that Respondent has established its prima facie defense that the disputed medical service is medically unnecessary. *A Khodadadi Radiology, P.C. v. NY Cent. Mut. Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table, Text in WESTLAW), Unreported Disposition, 2007 WL 1989432, 2007 N.Y. Slip Op. 51342(U) (N.Y. Sup. App. Term Jul 03, 2007). See

also, Amaze Medical Supply Inc. v. Eagle Insurance Company, 2003NY Slip Op 51701 (U), 2 Misc.3d. 128 (App. Term 2d & 11 Dist.-2003).

A conclusion set forth in a peer review may be insufficient if it fails to provide 1) specifics of the claim; 2) is conclusory; or 3) otherwise lacks basis in the facts of the claim, *Amaze Medical Supply v. Allstate Ins. Co.*, 3 Misc3d 43 [App Term 2d Dept 2004].) To meet its burden of proving disputed services were not medically necessary, respondent's expert must demonstrate the disputed treatment was rendered in a manner inconsistent with generally accepted professional practice, which is the range of practice that the profession will follow in the diagnosis and treatment of the patient in light of the standards and values that define it. (See *CityWide Social Work & Psychological Services, P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc3d 608 [Civ Ct Kings Co 2004].)

Peer Review by Dr. Jason Cohen M.D.

On June 2, 2016, Dr. Cohen performed a Peer review to determine the medical necessity of cervical facet block injection performed on Assignor on 6/1/16. Dr. Cohen reviewed medical records of the Assignor. Based on the medical records provided, the medical history of the assignor as well as established medical guidelines Dr. Cohen concluded that there was no medical justification for cervical facet block injection administered to Assignor on 6/1/16.

Dr. Cohen sites to medical literature which sets out the standard for performing the facet block injections. The literature indicates that focal tenderness over a facet joint is a strong indication in the appropriate settings, besides the presence of signs of paravertebral spasms or deformity in patients, with abnormal facet joints on imaging studies. Cervical facet pain is often characterized by chronic headaches, restricted motion and axial neck pain, which may radiate sub-occipitally to the shoulders or mid-back. In this case, Dr. Cohen states there is no documentation of focal tenderness overlying the facet joints at the levels blocked on 6/1/16. Additionally, there are no abnormal facet joints identified throughout the cervical spine on MRI.

Dr. Cohen goes on to say that there is indication for cervical facet block injections where there is failure of conservative care. There is usually axial or non-radicular pain, and physical examination, with positive provocative signs of facet disease (pain exacerbated by extension and rotation, or associated with lumbar rigidity.) In this case there is no documentation of positive provocative signs of cervical facet disease with pain exacerbation on extension and rotational maneuvers. Additionally, there is a disc bulge identified without evidence of facet joint arthropathy or pathology throughout the cervical spine.

Dr. Cohen goes on to say that facet joint medial branch blocks do not provide proper diagnosis for the facet joint being the main pain generator. Additionally, there is no documentation on follow-up reevaluation, by Dr. Reyfman of 80% relief status post prior cervical medial branch block performed on 5/18/16.

Once Respondent meets its burden of proof, the burden of persuasion regarding the medical necessity of the medical services then shifts to the Applicant to submit

competent medical evidence to refute Respondent's prima facie defense that the disputed medical service/test was medically unnecessary. Thus, Respondent's Peer report must be analyzed against that backdrop. *A Khodadadi Radiology, P.C.*.

In order for an applicant to prove that the disputed expense was medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. *High Quality Medical, P.C. v. Mercury Ins. Co.*, 2010 N.Y. Slip Op. 50447(U) (App Term 2d, 11th & 13th Dists. Mar. 10, 2010); *Pan Chiropractic, P.C. v. Mercury Ins. Co.*, 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App Term 2d, 11th & 13th Dists. July 9, 2009).

A letter of medical necessity sworn to by a provider who had examined assignor, along with other medical documentation, may be sufficient to rebut the IME and establish the medical necessity of the services rendered. See *Quality Psychological Servs., P.C. v. Mercury Ins. Group*, 2010 NY Slip Op 50601(U) (App Term 2d Dept., April 2, 2010). See also *Neomy Med., P.C. v. Geico Ins. Co.*, 2012 NY Slip Op 50145(U) (App Term 2d, 11th & 13th Jud Dists Jan. 24, 2012); *Vinings Spinal Diagnostic, P.C. v. Geico Gen. Ins. Co.*, 2010 NY Slip Op 51897(U) (App Term 2d Dept., Nov. 8, 2010) (an affidavit from a chiropractor "meaningfully referred to" the peer and "sufficiently rebutted the conclusions set forth therein"); *Park Slope Med. & Surgical Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 22 Misc.3d 141(A), 2009 NY Slip Op 50441(U) (App Term 2d, 11th & 13th Jud Dists 2009).

Rebuttal by Applicant

Applicant submits a rebuttal by Dr. Leonid Reyfman M.D. who was the treating provider in this case. Dr. Reyfman states that the patient did exhibit tenderness as documented in medical notes dated 6/1/16. Additionally, patient presented with pain in the neck that was exacerbated with flexion and extension which according to medical literature would be in support of facet injection. Dr. Reyfman goes on to say that lack of MRI findings does not necessarily mean that the injections were not necessary. Additionally, Dr. Reyfman states that contradictory to what Dr. Cohen stated in his peer review, the patient's pain was noted to be made worse with neck flexion and lateral rotation upon examination on 6/1/16. Additionally, Dr. Reyfman refutes Dr. Cohen's assertion that there was no improvement noted after the initial injection. Dr. Reyfman refers to his examination on 6/1/16 where he states that the patient experiences improvement of 70-80% for 1-2 weeks. The second injection was recommended. Dr. Reyfman cites to medical literature which speaks to efficacy of cervical facet block injections.

Addendum by Dr. Cohen:

Respondent submits an addendum by Dr. Cohen in response to Applicant's rebuttal. In his addendum, Dr. Cohen states that he respectfully reminds Dr. Reyfman of provocative maneuvers specific for facet-mediated pain including only extension and rotational maneuvers, not flexion maneuvers which alleviate facet pain. He goes on to say that Dr. Reyfman alludes to the physical examination findings of tenderness and moderate muscle spasm along the cervical spine. However, he fails to address and

resolve the lack of focal tenderness overlying the skeletal facet joint at the levels blocked.

Finally, Dr. Reyfman fails to address and resolve the identical and unchanged re-examination of the cervical spine compared to initial consultation status prior to cervical facet medial branch nerve block. There is also lack of any facet joint arthropathy or pathology identified throughout the cervical spine on imaging studies.

Conclusion:

After careful consideration of both parties' submissions, as well as oral arguments presented at hearing, I find the following. The crux of Dr. Cohen's peer report is that the patient did not present with clinical symptomatology to indicate the performance of cervical facet block injections. Additionally, he states that there is no efficacy of the injections. Dr. Reyfman refers to numerous medical reports where he notes positive findings that would indicate the performance of the injections in question. However, in his addendum Dr. Cohen points out that the symptoms that Dr. Reyfman refers to, are not the specific symptoms that would indicate necessity for the cervical facet block injections as listed in the medical literature cited by Dr. Cohen. Additionally, Dr. Cohen restated in his addendum that the patient's re-examination was unchanged post the injection performed on 5/18/16. Even though Dr. Reyfman notes that the patient experienced improvement, the examination results were exactly the same. Based on the above I find that Applicant has not been able to adequately rebut the conclusion of the peer doctor.

Accordingly Applicant's claim to reimbursement 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 Nassau

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

12/25/2017

(Dated)

Evelina Miller

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:
3df2aa4f2b08d33586939fc89af53365

Electronically Signed

Your name: Evelina Miller
Signed on: 12/25/2017