

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

AOT Chiropractic PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-16-1046-9375 |
| Applicant's File No. | FDNY16-13966 |
| Insurer's Claim File No. | 0473349660101113 |
| NAIC No. | 22063 |

ARBITRATION AWARD

I, Burt Feilich, 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 02/06/2018
Declared closed by the arbitrator on 02/06/2018

Todd Fass, Esq. from Fass & D'Agostino, P.C. participated in person for the Applicant

Jessica Rooney, Esq. from Printz & Goldstein, Esqs. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,019.62**, 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
 - a. Whether the chiropractic and/or electrodiagnostic testing services rendered by applicant were medically necessary for the care and treatment of injuries sustained in the accident, and, if so, whether applicant billed in accordance with the fee schedule and regulations.
4. Findings, Conclusions, and Basis Therefor

I have reviewed all documents included in the ADR system consisting of the submissions made by the parties. No additional documentation was submitted by either party at the time of the hearing.

This case involves a claim in the amount of \$1,019.62 and concerns the subject of chiropractic and/or electrodiagnostic testing services rendered by applicant for the care and treatment of injuries sustained by the alleged eligible injured person/assignor in an accident that occurred on December 11th, 2015. Respondent contends that the services rendered were not medically necessary on the basis of a peer review. It also contends applicant did not bill in accordance with the fee schedule.

Initially, according to First Amendment to Regulation 68-D, 11 NYCRR 65-4.5, the arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Insurance Department regulations.

I have carefully reviewed the medical evidence submitted by the parties concerning claimant, a 23-year old man who was a passenger in a vehicle involved in the accident, including the following: the initial chiropractic evaluation by Dr. Paul Victor Scarborough, DC of AOT Chiropractic, PC, dated December 18th, 2015; an initial neurodiagnostic medical evaluation by Dr. Elizabeth Ann Kulesza of Direct Medical Care, PC, dated February 3rd, 2016; an initial medical evaluation by Dr. Andre Duhamel, an internist, with Morris Park Primary Medical Care, PC, dated December 18th, 2015, and his followup progress reports from January 21st and March 17th, 2016; an initial pain management evaluation by Inna Levtsenko, A-GNP, with Metro Pain Specialists, PC, dated February 8th, 2016; an initial acupuncture evaluation by Sara Reznikoff, L.Ac. with Paradise Acupuncture, PC, dated December 29th, 2015, and her followup progress reports from February 3^d and March 14th, 2016; an initial psychological evaluation by Dr. Alexandra Shereshevskaya, MD, with Total Psychological Medical Services, PC, dated December 29th, 2015; the prescription/order by Dr. Scarborough, dated April 21st, 2016 for the testing in dispute; the results of lower extremity pain fiber sensory nerve testing performed on April 21st, 2016 by Dr. Scarborough showing abnormalities at the bilateral S1 and left S2 dermatomes; the results of lower extremity EMG/NCS testing taken on February 3rd, 2016 showing a right L5-S1 radiculopathy; results of range of motion and/or muscle strength testing from January 11th, March 14th and April 18th, 2016; results of Outcome Assessment testing from January 29th and March 28th,

2016; the results of a lumbar MRI taken on January 14th, 2016 showing bulging discs at L1-L5 and multilevel facet hypertrophy; and daily physical therapy, acupuncture and chiropractic treatment records.

In defense of the claim for the pain fiber sensory nerve testing of April 21st, 2016, respondent submits the peer review report of Dr. Ronald Csillag, a chiropractor, dated June 4th, 2016. He reviewed all of the medical records and reports referred to above. Dr. Csillag stated that Dr. Scarborough had not listed any radiating lower extremity symptoms nor recorded any deficits of lower extremity peripheral neurological function on December 18th, 2015. Dr. Csillag stated that pain fiber sensory testing is not recommended as a reliable and credible test and is not deemed effective by standard medical organizations. This testing would not impact claimant's management in any meaningful way. Dr. Csillag also emphasized that previous EMG/NCS testing on February 3rd, 2016 found a right-sided L5-S1 radiculopathy and there was no reason why this testing was needed in view of that previous testing. Dr. Csillag cited to medical literature to support his opinion.

After reviewing all of the evidence and after listening to the arguments of the parties, I find that respondent has met its evidentiary burden of proving that there was no medical necessity for the lower extremity pain fiber sensory nerve testing of April 21st, 2016. I agree with practically all of the comments made by Dr. Csillag regarding the lack of validity of such testing as being unreliable and not persuasive. Although Dr. Csillag contended that Dr. Scarborough did not document the presence of lower extremity radiating symptoms when he examined claimant on December 18th, 2015, other treating providers did note such symptoms and the previously performed lower extremity EMG/NCS testing did find a right-sided L5-S1 radiculopathy. However, that criticism of the peer review is minor compared to the failure of Dr. Scarborough to have provided a valid and clear explanation why this testing was needed even after the lower extremity EMG/NCS testing was positive for a right-sided lumbar radiculopathy. Consequently, I uphold respondent's defense to this claim on the basis of a lack of medical necessity thereof.

Therefore, my award is in favor of respondent, and the claim is denied in its entirety.

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

02/08/2018

(Dated)

Burt Feilich

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:
05d8b0ff5c2381ae001828aade2f6421

Electronically Signed

Your name: Burt Feilich
Signed on: 02/08/2018