

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Queensboro Chiropractic PC , SNPT PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-17-1074-0955
Applicant's File No. 787922
Insurer's Claim File No. 0527273640101017
NAIC No. 22055

ARBITRATION AWARD

I, Nicole J. Simmons, 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: IP

1. Hearing(s) held on 04/13/2018
Declared closed by the arbitrator on 04/13/2018

Hyman Ashkenazy, Esq. from Slotnick & Ashkenazy, LLP participated in person for the Applicant

Laurie Finkel, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ **1,251.20**, 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 Respondent's denials based upon negative independent medical examinations (IMEs) can be sustained.

The IP (JL), a 31-year old female driver, was involved in a motor vehicle accident on July 3, 2016. As a result, IP suffered injuries which resulted in her seeking treatment including acupuncture, chiropractic care and physical therapy. Applicants submitted claims that were denied by Respondent based upon the negative IMEs conducted by Frank McNally, D.C. on 9/30/16 with an effective cutoff date of 10/14/16 and Richard

Weiss, M.D. on 12/6/16 with an effective cutoff date of 12/28/16. Applicants now seek reimbursement for post-IME treatment as follows: Queensboro Chiropractic, \$407.81 for eleven chiropractic sessions and an office visit between 5/16/16 and 7/12/16; and SNPT, \$843.31 for physical therapy sessions and an office visit from 1/10/17 to 6/21/16.

4. Findings, Conclusions, and Basis Therefor

I have reviewed and considered all pertinent documents contained in the American Arbitration Association's ADR Center. The case was decided based upon the submissions of the parties and the oral arguments of the parties' representatives made at the arbitration hearing. There were no witnesses.

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

Applicant has established its prima facie case as Applicant has met the requirements enunciated in Ave T MPC Corp. v Auto One Ins. Co., 32 Misc 3d 128[A], 2011 NY Slip Op 51292[U] [App Term, 2d, 11th & 13th Jud Dists. 2011]. The Court held that "A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission to the defendant of a claim form, proof of the fact and the amount of the loss sustained, and proof that the defendant either failed to pay or deny the claim within the requisite 30-day period, or issued a timely denial of claim that was conclusory, vague or without merit as a matter of law," (see Insurance Law § 5106 [a]; Westchester Med. Ctr. v Nationwide Mut. Ins. Co., 78 AD3d 1168 [2010]; see also New York & Presbyterian Hosp v. Allstate 31 AD3d 512 [2006]).

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; Kings Medical Supply Inc. v. Country Wide Insurance Company, 783 N.Y.S. 2d at 448 & 452; Amaze Medical Supply, Inc. v. Eagle Insurance Company, 2 Misc. 3d 128 [App Term, 2nd and 11 Jud Dists 2003]).

Respondent asserts that the treatments for the subject dates of service were timely denied based upon the IMEs of Dr. McNally and Dr. Weiss. An IME report asserting no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. Carle Place Chiropractic v. New York Central Mut. Fire Ins Co., 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle,

J.). An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. E.g., 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). The case law states that the Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. Bronx Expert Rad Radiology, P.C. v Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

Queensboro Chiropractic

The IP was examined by Dr. McNally on 9/30/16. Dr. McNally noted the medical records which he reviewed and then conducted an examination of the cervical and lumbar spine. At the time of the exam, the IP complained of neck and lower back pain. All range of motion was normal, with the findings based on the Guides to the Evaluation of Permanent Impairment, Fifth Edition. Upon examination of the cervical spine, the Foraminal Compression test, Shoulder Depression test, Cervical Distraction test, and Soto-Hall sign were all negative; there was no sensory deficit and reflexes were normal. Examination of the lumbar spine revealed Straight Leg Raising test, Braggart's test, Kemp's test, and Fabere Patrick's test were all negative. Upon neurological examination, there was no sensory deficit and muscle strength and reflexes were normal. Finally, a chiropractic evaluation revealed no antalgic lean, with head, shoulders and hips level. Based on his examination, Dr. McNally determined that the cervical sprain/strain and lumbar sprain/strain were both resolved. He opined that there was no need for further chiropractic treatment or follow-up, diagnostic testing, massage therapy, household help, medical supplies, or transportation services.

SNPT / Dr. Weiss IME

The IP was examined by Dr. Weiss on 12/6/16. Dr. Weiss provides a brief history relating to the accident and the IP's treatment to date. The IME report indicates all findings were objectively negative and unremarkable. The examination report indicates range of motion within normal limits and objective test were noted to be negative including the Spurling's and straight leg raising tests. Dr. Weiss notes no spasm or paraspinal tenderness over the cervical and lumbar spine. Motor strength was 5/5 in all muscle groups tested and deep tendon reflexes were 2+ and symmetric in the bilateral upper and lower extremities. Dr. Weiss's diagnosis was resolved cervical and lumbar spine sprain/strains, resolved. Dr. Weiss concluded there was no need for further treatment.

Applicant argues the evidence demonstrates the IP was still experiencing pain and discomfort associated with injuries initially sustained in the motor vehicle accident of 7/3/16 at the time of the IME. Applicants' proof consists of medical and treatment records several months prior to the IME, specifically the 10/10/16 EMG/NCV testing which was positive for left C-5 and bilateral L5-S1 radiculopathy and 8/10/16 MRIs

which revealed cervical and lumbar herniations and bulges with impingement. The IP's physical therapy treatment records are consistent for general complaints of pain and muscle spasm throughout the treatment period. The IP's 10/10/16 neurodiagnostic evaluation. The IP's lower back pain was reported at 8-9/10 and neck pain was 7-8/10 with tenderness. Positive cervical findings included the Maximal Cervical Compression test, Jackson's Compression test, Soto Hall test, and multiple trigger points. Positive lumbosacral findings included Straight Leg Raising test (bilaterally), Laseque Differential sign (bilaterally), Braggards' sign (bilaterally), and Bechterew's test.

Applicant's evidence supports the contention that the IP's condition had not resolved, and the ongoing orthopedic/physical therapy and chiropractic treatment was medically necessary at the time the IP underwent the IMEs. The records show that the IP's condition continued to improve with treatment up to the time of her 7/12/17 follow-up examination at which time it was determined that the IP would not derive further benefit from treatment and was at that time discharged.

As per the evidence before me, I find the Applicant's proof is sufficient to overcome the showing made by the IME doctors. After reviewing the IP's medical records, I defer to the opinion of the Applicant, as treating provider rather than the opinion of the Respondent's IME doctors in this instance. I find Applicant's assessment of the IP's condition regarding treatment to be credible and convincing.

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Applicants and grant Applicants' claims.

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
	Queensboro Chiropractic PC	05/16/17 - 06/06/17	\$208.08	Awarded: \$208.08
	SNPT PC	01/10/17 - 02/03/17	\$535.31	Awarded: \$535.31
	Queensboro Chiropractic PC	06/14/17 - 07/06/17	\$165.13	Awarded: \$165.13
	Queensboro Chiropractic PC	07/12/17 - 07/12/17	\$34.68	Awarded: \$34.68
	SNPT PC	05/29/17 - 06/21/17	\$308.00	Awarded: \$308.00
Total			\$1,251.20	Awarded: \$1,251.20

B. The insurer shall also compute and pay the applicant interest set forth below. 10/24/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall compute interest and pay the Applicant the amount of interest computed from the filing date as indicated above at the rate of 2% per month, simple, not compounded, calculated on a pro rata basis using a thirty-day month, and ending with the date of payment of the award.

C. Attorney's Fees

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

After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20% of that sum total, subject to a maximum fee of \$1,360. See, 11 NYCRR 65-4.6 (d).

However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6 (b).

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

05/14/2018
(Dated)

Nicole J. Simmons

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:
a1a9305314d6df7180e98efa1eb864a3

Electronically Signed

Your name: Nicole J. Simmons
Signed on: 05/14/2018