

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Complete Spinal Physical Therapy &
Chiropractic PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-16-1051-3200
Applicant's File No.	207-3142
Insurer's Claim File No.	0138720970101224
NAIC No.	35882

ARBITRATION AWARD

I, Dimitrios Stathopoulos, 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 05/30/2018
Declared closed by the arbitrator on 05/30/2018

Kelliann Jones, Esq. from Lewin & Baglio LLP participated in person for the Applicant

Philippa Tapada, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,008.42**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amends and reduces the amount in dispute to \$1640.82.

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

3. Summary of Issues in Dispute

Assignor was then a 59-year-old female involved in a motor vehicle accident on 8/29/15. Consequently, it is alleged Assignor sustained injuries for which the Applicant herein provided physical therapy services. Respondent partially paid the services and denied the remainder on fee schedule defenses and IME's conducted by Dr. Michael

Levin and chiropractor Dr. Frank McNally, both on 12/9/15. Thus, the issues to be determined are:

Whether the Applicant is entitled to reimbursement for services rendered to the Assignor after the Respondent's independent medical evaluation ("IME") cut-off?

Whether the Respondent can sustain their fee schedule defenses?

4. Findings, Conclusions, and Basis Therefor

Applicant is seeking to be reimbursed the amended sum of \$1640.82 for physical therapy services rendered to the Assignor from 9/3/15 through 4/15/16. This award is rendered upon the oral arguments of the parties and the documentary evidence submitted by the parties. The documentary evidence submitted by the parties consists of the documents contained within the American Arbitration Association's ADR Center for this matter as of the above declared closed date and.

Pursuant to 11 NYCRR 65-4.5(o) (1), 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.

It should be noted that this matter is linked to AAA case number's 171710618909, 171610502703, and 171710625784, and all matters were arbitrated before this arbitrator.

A synopsis of the evidence presented indicates the Assignor was then a 50-year-old female pedestrian struck by an automobile on 8/29/15. There was no reported loss of consciousness. There was emergency room treatment at St. Barnabas hospital where the Assignor was evaluated, treated and released the same day. It is alleged Assignor sustained injury to her neck, back and left knee. Consequently, Assignor underwent diagnostic testing, physical therapy, acupuncture and chiropractic treatment. On 9/2/15 the Assignor was evaluated by chiropractor Dr. Demetrios Karakizis. Physical examination found spinal tenderness, decreased range of motion and positive orthopedic tests. Diagnostic testing and chiropractic treatment was recommended. On 9/22/15 Assignor consulted Dr. Kenneth McCulloch for her left knee pain. Examination of the left knee revealed an antalgic gait, decreased range of motion, medial and lateral joint line tenderness, positive McMurray's, swelling and instability. It was reported in Dr. McCulloch's report that an MRI of the left knee on 9/4/15 revealed effusion, complex tear over the mid-body of the posterior horn of the medial meniscus, tear of the lateral meniscus, and fissure with the patellar cartilage. Continued physical therapy was recommended. On 10/6/15 Dr. McCulloch reevaluated the Assignor for her left knee pain. Examination findings were similar to the 9/22/15 examination. The plan called for arthroscopic surgery. On 12/7/15 and 2/1/16 Dr. Karakizis performed relevant follow-up

chiropractic examinations, and documented hypertonicity, tenderness, moderately decreased range of motion and positive orthopedic findings. The plan called for continued treatment.

Upon reviewing the evidence submitted by the Applicant, I find the Applicant submitted sufficient credible evidence to establish a prima facie case with the respect to the services that are the subject of this arbitration. See, Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004); Amaze Medical Supply Inc. v. Eagle Ins. Co., 2 Misc 3d 128[A], 2003 NY Slip Op 51701 (U) (App Term, 2d and 11th Jud Dists 2003).

Once Applicant has made out a prima facie case, the burden shifts to Respondent to timely request additional verification, deny, or pay the claim. Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 NY3d 312 (2007). Respondent presented the following defenses to the claims:

Fee Schedule

Respondent paid \$56.12 for the physical therapy visits rendered from 9/3/15 through 12/21/15. Applicant asserts that they are entitled to \$61.60 per physical therapy visit, and thus are entitled to the balance of \$5.48 for each date of service in the total sum of \$126.37. Applicant billed CPT codes 97110, 97014 and 97010 for each physical therapy modality rendered on each date of service. Applicant billed CPT code 97110 in the sum of \$25.09, which is less than the \$30.57 maximum reimbursement that they would be entitled to under the relevant fee schedule. Respondent contends that they paid this CPT code in the full billed amount and reduced 97014 and 97010 and paid those codes pursuant to permitted rates under the fee schedule. I find the payments proper. Applicant was paid for what they billed for under CPT code 97110, and the maximum that they were entitled to a code 97014 and 97010. Accordingly, Applicant's request for the balance of the \$5.48 for each date of service is denied.

In addition, for some of the physical therapy services rendered from 9/3/15 through 12/21/15, Respondent denied full reimbursement predicated upon an eight unit rule defense leaving a balance of \$259.35. However, Respondent presented no persuasive evidence in support of the eight unit rule defense for these bills. Accordingly, Applicant is awarded the balance of \$259.35 for these bills.

IME

Respondent denied the remaining disputed services, which is for physical therapy rendered from 12/23/15 through 4/15/16 predicated upon negative IMEs conducted by orthopedist Dr. Michael Levin and chiropractor Dr. Frank McNally, both on 12/9/15.

The defense that benefits were not medically necessary is an affirmative defense borne by the insurer. See, Vinnings Spinal Diagnostics P. C. v. Liberty Mutual Insurance Co., 186 Misc. 2d 287, 717 NYS2d 466 (1st Dist. Ct. Nass. Co. 2000). An IME report asserting that 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 Mutual 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., Andrew M. Engle, J., May 29, 2008).

The relevant IME for determining the necessity of the contested physical therapy services, is Dr. Levin's orthopedic IME. Dr. Levin noted that the Assignor's present complaints at the IME were of spine pain, coccyx pain and left knee pain. Examination of the cervical, dorsal and lumbar spine found no tenderness, no muscle spasm and normal range of motion. Reflex, muscle and sensory examination of the extremities found no deficits. Examination of the left knee found no detectable effusion, no tenderness, normal range of motion, negative orthopedic tests and no instability. The diagnosis was resolved cervical and thoracolumbar sprain, and resolved left knee contusion. Dr. Levin noted that there was no need for any for further related orthopedic treatment, including surgery.

Applicant's counsel argues that Dr. Karakizis' contemporaneous evaluations to the IME, documented deficits that warranted continued treatment, including physical therapy. Respondent's counsel counters that Dr. Karakizis is a chiropractor and thus his evaluations are insufficient to rebut and/or refute Dr. Levin's opinion that no further physical therapy treatment was necessary.

I find Dr. Levin's IME sufficient to establish the Respondent's burden that the services rendered after the IME were not medically necessary. Dr. Levin conducted a complete and thorough examination that was normal and specifically opined that no further treatment including physical therapy, was necessary. I further find the Applicant has failed to rebut and/or refute the Respondent's showing that the disputed physical therapy services after the IME were not necessary. The records submitted indicate that the last medical/orthopedic evaluation Assignor received before the IME was on 11/3/15, which is more than a month before Respondent's IMEs, and no follow-up orthopedic/medical evaluation after Respondent's IME is submitted in the record. Although, I appreciate Applicant's counsel's argument that there were contemporaneous chiropractic evaluations that noted deficits and recommended continued treatment, these contemporaneous records are from a chiropractor and are unpersuasive in rebutting Dr. Levin's assessment that no further physical therapy treatment was necessary after the

IME. The record is simply devoid of contemporaneous medical/orthopedic examinations to the IME to justify reimbursement for these post physical therapy IME services. Accordingly, this portion of Applicant's claim is denied in its entirety.

Decision

Based upon the reasons set forth above the Applicant is awarded the sum of \$259.35 in full disposition of this claim.

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
	Complete Spinal Physical Therapy & Chiropractic PLLC	09/03/15 - 04/15/16	\$2,008.42	\$1,640.82	Awarded: \$259.35
Total			\$2,008.42		Awarded: \$259.35

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/22/2016 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since, the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the Applicant, the amount of interest at the rate of 2% per month, simple, 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

The Respondent shall also pay the Applicant, an attorney's fee of 20%, with no minimum fee and a maximum fee of \$1,360.

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

05/30/2018
(Dated)

Dimitrios Stathopoulos

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:
3cc720214f32763b48b8222037fe92c7

Electronically Signed

Your name: Dimitrios Stathopoulos
Signed on: 05/30/2018