

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lenox Hill Radiology & Medical Imaging
Associates PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-17-1064-3065
Applicant's File No.	A14292
Insurer's Claim File No.	0400231710101061
NAIC No.	22055

ARBITRATION AWARD

I, Karen Fisher-Isaacs, 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 07/17/2018
Declared closed by the arbitrator on 07/17/2018

Andrew Bruskin from Munawar & Andrews-Santillo LLP participated in person for the Applicant

Crystal Russo from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,457.88**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant, by counsel, amended the amount of the claim to \$4,018.03, \$1,571.80 for cervical and lumbar MRIs performed on January 9, 2016, and \$874.44 for brain stem MRI performed on February 23, 2016 and \$1,571.79 for cervical and lumbar MRIs performed on August 5, 2016.

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

3. Summary of Issues in Dispute

In dispute is Applicant' billing for cervical and lumbar spine MRIs performed on January 9, 2016; for a brain stem MRI performed on February 23, 2016; and for cervical and lumbar spine MRIs performed on August 5, 2016 for Assignor, a 39-year old female, in connection with treating injuries allegedly sustained in a December 23, 2015.

Whether Respondent's denials for the MRIS performed on January 9 and February 23, 2016 based on peer review reports can be sustained.

Whether Respondent's denial for the second set of cervical and lumbar MRIs performed on August 5, 2016 based on an IME report can be sustained.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the American Arbitration Association's ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award.

Applicant seeks reimbursement in the amended amount of \$4,018.03 for cervical and lumbar MRIs performed on January 9, 2016, for a brain MRI performed on February 23, 2016 and for cervical and lumbar MRIs performed on August 5, 2016 for Assignor, a 39-year old female, in connection with treating injuries allegedly sustained in a motor vehicle accident on December 23, 2015. Respondent timely denied Applicant's claim for the MRIs performed on January 9 and February 23, 2016 based on peer review reports and Respondent timely denied Applicant's billing for the MRIs performed on August 5, 2016 based on an IME report.

I find that 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 & Presby Hosp v. Allstate* 31 AD3d 512 [2006])."

Assignor was a front-seated passenger in a motor vehicle that was involved in an accident on January 6, 2016. She was evaluated at Lutheran Hospital and released the same day. She presented to DHD Medical for an initial exam on January 6, 2013. Assignor complained of headaches, radiating neck pain, right shoulder pain and low back pain without radiation, paresthesias or weakness. After performing a physical examination, Dr. Alfredo Davila-Rivera's diagnoses included neck and low back spine strain/sprain and right shoulder sprain. His treatment plan included starting Assignor on physical therapy; he referred Assignor to an orthopedist, a neurologist and a psychologist; and he recommended only a cervical MRI.

Respondent's evidence established that it timely denied Applicant's billing for both a cervical and a lumbar MRI performed on January 9, 2016 based on Dr. Alan P. Wolf's peer review report. Dr. Wolf advised that the tests were performed prematurely before Assignor had an adequate trial of at least 6 weeks of physical therapy. Assignor did not present with any red flags- there was no indication that Assignor had a serious underlying condition affecting her spine which might require urgent MRI such as vertebral infection, cauda equine syndrome or cancer. In fact Dr. Davila Rivera documented a normal neurologic examination with respect to muscle strength, reflexes and sensation. He stated that, absent red flags, spinal MRIs should only be considered once it becomes evident that a patient is not responding to physical therapy or if a patient has clinical evidence of a progressive neurological or orthopedic defect. That was not the case with Assignor. He added that the MRI results would not impact Assignor's treatment options.

Dr. Wolf referenced medical authorities and discussed Assignor's physical findings, establishing Respondent's defense that the disputed MRIs were not medically necessary. "Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the [Applicant] which must then present its own evidence of medical necessity." *West Tremont Medical Diagnostic PC v. GEICO*, ___ Misc.3d ___ (App. Term 2nd & 11th Jud Dists. 9/29/06).

Applicant relies on a rebuttal by Dr. Narayan Paruchuri, the radiologist who interpreted the disputed MRI studies. Dr. Paruchuri relies mainly on the 2014 NYS Workers' Compensation Board Medical Treatment Guidelines, Dr. Paruchuri maintains that both MRIs were warranted given the presence of "red flags." However, Dr. Paruchuri fails to consider that those very guidelines provide for a preliminary course of conservative care in all but the most emergent scenarios (e.g., spinal cord injury or compartment syndrome). Dr. Paruchuri has not persuasively established that there were red flags present at all, let alone ones that required the performance of immediate MRIs, as is underscored by Dr. Davila-Rivera's own diagnosis of sprain/strain. Accordingly, I sustain Respondent's denial for the cervical and lumbar MRIs performed on January 9, 2016.

Assignor presented to Dr. David Lifschutz, a neurologist on February 3, 2016 complaining of posttraumatic headaches and dizziness. After performing a physical examination, Dr. Lifschutz diagnoses included head trauma/ status post concussion- no loss of consciousness with post concussion syndrome, cervical whiplash injury, post traumatic paroxysmal positional vertigo with acute posttraumatic headaches with cervicogenic/tension component. His treatment plan included sending Assignor for videonystagmography testing battery to determine the cause of Assignor's lightheadedness/off balance/ vertiginous symptoms. The videonystagmography report dated February 4, 2016 indicated no evidence of peripheral vestibular dysfunction and evidence of central vestibular dysfunction. Dr. Lifschutz wrote that an MRI/DTI of the brain should be considered to evaluate for post concussive changes/axonal pathology. On February 17, 2016 Assignor presented to Dr. Lifschutz for a follow up exam.

Assignor continued to complain of "some difficulty focusing, some anxiety, difficulty sleeping, intermittent lightheadedness/off balance feeling-veering to the right/vertiginous symptoms and occipital headaches. He ordered a brain MRI with DTI imaging to evaluate for post concussion changes/axonal pathology.

Respondent's evidence established that it timely denied Applicant's billing for the brain MRI performed on February 23, 2016 based on Dr. Amit Khaneja's peer review report. He wrote that there was no medial diagnosis to justify the brain MRI - Assignor's non-dilated fundoscopic exam was normal and no baseline neuroimaging, i.e. CT scan was obtained. He advised that in general CT scanning is preferred for studies to identify acute hemorrhage, bony abnormalities and calcifications and that MRIs provided better imaging of the posterior aspects of the brain, the central nervous system, the pituitary and the parenchymal brain tissue. He concluded by stating that most post concussive symptoms resolve spontaneously within 2-3 weeks.

I find that the Respondent has not demonstrated by sufficient factual basis and medical rationale that the MRI of the brain was medically unnecessary. Dr. Khaneja did not discuss Dr. Lifschutz's reason for ordering the MRI-to evaluate for post concussion changes/ axonal pathology. Additionally, while he writes that most post concussive symptoms resolves spontaneously within 2-3 weeks - this MRI was performed 2 months after Assignor's motor vehicle accident.

Respondent's evidence established that it timely denied Applicant's billing for cervical and lumbar MRIs performed on August 5, 2016 based on Dr. Marian Golden's neurological IME and Dr. Jay Eneman's orthopedic IME. Both doctors examined Assignor on June 28, 2016. Both doctors noted that Assignor complained of low back pain, radiating numbness at her right arm, right shoulder pain and headaches. Dr. Golden's examination of Assignor's cervical, thoracic and lumbar spine was unremarkable. There were no spasms or tenderness, range of motion testing was full and all testing was negative. Based on the lack of any objective findings, Dr. Golden diagnosed resolved cervical and lumbar spine strains. Dr. Eneman indicated some restrictions in range of motion testing, but advised that they were voluntary and that there was no evidence of an orthopedic disability. As did Dr. Golden, Dr. Eneman determined that Assignor's cervical and lumbar spine sprain/strain, and right shoulder sprain/strain had resolved.

Dr. Davila Rivera's June 21st examination of Assignor's cervical/ thoracic and lumbar spine did reveal tenderness to palpation and restricted range of motion testing in the cervical and lumbar spine as well as the right shoulder. Orthopedic tests including SLR, Hawkins and Neer's created mild discomfort to pain. He recommended that Assignor continue with physical therapy. Dr. Howard Baum, of Bay Ridge Orthopedic Associates examined Assignor on July 5, 2016. He noted that his examination of Assignor's cervical and lumbar spine indicated spasm, guarding tenderness and restricted motion. Dr. Davila's July 18th follow up revealed tenderness to palpation of the cervical/ thoracic and lumbar spine with restricted range of motion testing. He recommended continued treatment.

Assignor's contemporaneous medical records indicate that Assignor continued to have complaints in her back and right shoulder. As such, even if I were to find the IMEs sufficient to sustain Respondent's burden, I would find that Applicant's evidence had met that burden. I find that the medical records meaningfully rebut the conclusions set forth by the IME doctors. See, *High Quality Medical, P.C. v. Mercury Ins. Co.*, 26 Misc.3d 145(A), 2010 N.Y. Slip.Op. 50447(U) ((Sup. Ct. App. Term 2d Dep't 2010). Since the denial indicates that Respondent denied Applicant's billing solely based on Dr. Golden and Dr. Eminem's IMEs, Applicant is awarded \$1,791.71 for the cervical and lumbar MRIs performed on August 5, 2016.

Accordingly, Applicant is awarded \$2,446.23 in total satisfaction of its amended 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
	Lenox Hill Radiology & Medical Imaging Associates PC	01/09/16 - 08/05/16	\$4,457.88	\$4,018.03	Awarded: \$2,446.23

Total	\$4,457.88		Awarded: \$2,446.23
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B. The insurer shall also compute and pay the applicant interest set forth below. 04/25/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay Applicant interest on the total first-party benefits awarded herein, computed from April 25, 2017 (date of filing) to the date of payment of the award, but excluding April 25, 2017 from being counted within the period of interest. The interest rate shall be two percent per month, simple (i.e., not compounded), on a pro rata basis using a 30-day month.

C. Attorney's Fees

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

20% of the amount awarded.

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 Kings

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

07/27/2018
 (Dated)

Karen Fisher-Isaacs

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:
ffe28d4aec8d1a5a38398ebe49899efe

Electronically Signed

Your name: Karen Fisher-Isaacs
Signed on: 07/27/2018