

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metropolitan Interventional Medical
Services, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-17-1069-4292
Applicant's File No.	216546
Insurer's Claim File No.	0555769610101015
NAIC No.	22055

ARBITRATION AWARD

I, Lori Ehrlich, 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 07/24/2018
Declared closed by the arbitrator on 07/24/2018

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated in person for the Applicant

Brian McDonough, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 46,904.08**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amended to \$14,430.01

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

3. Summary of Issues in Dispute

In dispute are Applicant's bills in the sum of \$14, 430.01 for for cervical epidural injections and cervical medial branch blocks and anesthesia performed on Applicant's assignor as a result of injuries allegedly sustained in an automobile accident on December 7, 2016,

Respondent has denied these bills based on peer review and fee schedule and the issues presented are whether Respondent has proved that the services at issue were not medically necessary and whether the fee schedule denial is properly sustained,

I have reviewed the documents entered into the ADR by July 24, 2018.

4. Findings, Conclusions, and Basis Therefor

The claims at issue are for cervical epidural steroid injections which were performed on Claimant, S.A.P., a forty seven year old male on January 18, February 1 and February 15, 2017 and cervical medial branch blocks performed on March 1, 2017 and March 22, 2017. The instant case was heard simultaneously with related claims for the facility fees which accompanied the services at issue (17-17-1065-9110), submitted by Applicant Accelerated Surgical Center of North Jersey, and the evidence in both cases will be considered together. Applicant has set forth a prima facie case by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11th Jud. Dusts]).

FEE SCHEDULE

Applicant has amended the amount in dispute to be consistent with the fee schedule analysis submitted by Respondent. While there is a slight discrepancy from the amount Respondent had proposed ((\$13, 945.78), that arises from the fact that Respondent's audit failed to include one of the codes in dispute, and Applicant has included that code at the correct fee schedule amount.

FEBRUARY 1, 2017

The fee for the injection performed on February 1, 2017 was neither paid nor denied. It is well established that a no- fault claim must be paid or denied within 30 calendar days after proof of claim is received. See New York Insurance Law, Sec. 5106 (q); 11NYCRR 65-3.8(a) (1); Presbyterian Hospital v. Maryland (90 NY2d 274, 660 NYS 2d 536 (1997)). Proof of claim, as defined in 11NYCRR 65-3.8(a) (1),"shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this subpart". When an insurance company fails to comply with its duty to act expeditiously in processing no-fault claims, it will be precluded from raising most defenses." See Presbyterian Hospital v. Aetna Cas. & Surety Co., 233AD2d 431, 432 (2d Dept. 1996) 1v to app. Den'd, 90 NY2d 802(1997).

While Respondent's Counsel contends that the claim for the services rendered on February 1, 2017 is not ripe for arbitration as the Applicant has not responded to verification requests, Applicant has submitted responses to Respondent's February 28, 2017 and March 10, 2017 verification requests relative to the claims for February 1, 2017. Notably, the response is identical to the verification responses for each of the other claims at issue which were denied by Respondent based on medical necessity. Additionally, it is clear that Respondent was in possession of the documents necessary to determine the medical necessity of the services rendered on February 1, 2017, as Dr. Ehrlich's peer review dated April 18, 2017, addresses not only the February 15, 2017 date of service but also provides a thorough review and opinion as to the medical necessity for the services provided on February 1, 2017. Accordingly, the claims for January 18, 2017 are awarded.

MEDICAL NECESSITY

The remaining four claims were denied based on the peer reviews of Dr. Mitchell Ehrlich. Given that Applicant has set forth a prima facie case, the burden now shifts to the insurer to prove that the services at issue were not medically necessary. (see Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

In addressing the January 18, 2017 and February 15, 2017 cervical epidural injection Dr. Ehrlich maintains that the injection and associated fees were not medically necessary because the physical examination did not reveal radiculopathy and "the imaging study did not reveal any correlative lateralizing disc pathology". He further notes that between an initial injection on February 1 and the injection on February 15th the Claimant underwent surgery of the right shoulder which would account for the pain in the right arm and would be another reason not to perform the injection to the right arm. Dr. Ehrlich cites to the New York State Workers' Compensation Board New York Neck Injury Medical Treatment Guidelines stating that "Cervical ESIs are not effective for cervical axial pain or non-radicular pain syndromes" and they are not recommended "as treatment for any acute or non-acute axial neck pain without a radicular component."

In addressing the medial branch blocks performed on March 1, 2017 and March 22, 2017, Dr. Ehrlich concluded that the branch blocks were not indicated because the treating provider did not demonstrate that the Claimant's pain was predominantly facet in origin. Dr. Ehrlich maintained that to the contrary, the diffuse posttraumatic discomfort lacked the specificity of posttraumatic facet-mediated pain expected to respond to local injections, which was especially true bilaterally. Dr. Ehrlich notes that in general diffuse discomfort does not respond well to focal injections. Dr. Ehrlich states that conservative management was still underway, and under these circumstances there was no casually related reason to block the facets.

I find that Respondent has effectively rebutted the presumption of medical necessity established by the Applicant. Dr. Ehrlich's peer reviews set forth sufficient factual foundations and medical rationale upon which his conclusions are based. As such, the burden shifts to the Applicant to refute the Respondent's evidence (see Expo Medical Supplies Inc. v. Claredon Ins. Co., 2006 NY Slip Op 50892(u).)

Applicant has submitted a rebuttal to the peer review from Dr. Alexandr Zaitsev, who performed the procedures at issue. Dr. Zaitsev describes the Claimant's post-accident medical treatment from the emergency room where a Ct scan of the cervical spine was taken and medication prescribed; an initial physical therapy evaluation conducted on December 14, 2016 with treatment initiated and an initial chiropractic evaluation conducted on December 16, 2016, with treatment of the cervical spine initiated. Dr. Zaitsev references a cervical spine MRI performed on December 27, 2016 which revealed a herniated disc at C6-C7, a bulging disc at C5-C6, hypertrophic joint changes and loss of normal signal intensity and height. Dr. Zaitsev states that the Claimant presented to his facility on January 9, 2017 with complaints of neck pain with numbness and tingling down the hands and weakness in the arms. Physical therapy and chiropractic treatment reportedly offered temporary moderate relief and examination revealed muscle spasm, decreased range of motion, decreased muscle strength on the bilateral shoulder abductors and left hand grip, decreased sensation over the right forearm and hand and Cervical Compression test was positive. The Claimant was diagnosed with cervical disc disorder at C5-C6 and C6-C7 with radiculopathy and cervivalgia, and a cervical epidural injection was recommended. Dr. Zaitsev documents the course of treatment administered from January 18, 2017 through March 22, 2017 and states that in his opinion based upon a reasonable degree of medical certainty, the cervical epidural steroid injections and medial branch blocks were medically necessary and casually related to the accident³frthe cervical epidural steroid injections and medial branch blocks were medically necessary and casually related to the accident.

Dr. Zaitsev states that he does not agree with Dr. Ehrlich's conclusion as to the medical necessity of the cervical epidural steroid injections. He states that Dr. Ehrlich's opinion is premised upon his assessment that physical examination did not reveal significant radiculopathy and that the imaging study did not reveal any correlative lateralizing disc pathology. However, Dr. Zaitsev states that to the contrary, the Claimant presented with complaints of numbness and tingling and that a positive compression test is indicative of nerve root compression secondary to disc displacement, and points out that decreased muscle strength and sensation were noted. Dr. Zaitsev also points out that the MRI revealed disc herniation compressing the thecal sac and bulging deforming the thecal sac and spinal cord. Dr. Zaitsev maintains that based on the subjective complaints, objective findings and diagnostic tests it is clear that the Claimant had radiculopathy and therefore the testing was warranted pursuant to the New York State Workers' Compensation Board New York Neck Injury Medical Treatment Guidelines.

In responding to the peer reviewer's opinion that the medial branch blocks were not medically necessary because the Claimant's pain was predominantly facet in origin and

that the diffuse posttraumatic discomfort lacked the specificity of posttraumatic facet-mediated pain expected to respond to local injections, Dr. Zaitsev maintains that MRI findings documented hyperostrophic joint changes of the bilateral zygapophyseal joints at C6-C7 and hyperostrophic joint changes of the bilateral zygapophyseal joints and joints of the Luschka at C3-c4, C4-C5 and C5-C6 disc space levels. He states that the ESIs which were initially recommended and performed helped to diminish radicular pain but despite three months of conservative care, complaints of neck pain continued, thus facet pathology was entertained. Dr. Zaitsev states that facet pathology was "performed to treat, diagnose and confirm if the pain of the patient was coming from a facet joint."

After consideration of the relevant evidence, I find that Applicant has successfully rebutted the evidence submitted by Respondent. Dr. Zaitsev's rebuttal meaningfully addresses the issue raised by the peer reviewer and convincingly establishes that the treatment at issue was medically necessary.. Accordingly, I defer to the opinion of the treating physician in deterring the medical necessity of the services at issue and Applicant is awarded \$14, 430.01.

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.

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Medical		From/To	Claim Amount	Amount Amended	Status
	Metropolitan Interventional Medical Services, PC	01/09/17 - 03/22/17	\$46,904.08	\$14,430.01	Awarded: \$14,430.01
Total			\$46,904.08		Awarded: \$14,430.01

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/26/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Insurer shall pay interest at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month. Interest shall be computed from 07/26/2017 to the date of payment.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00. However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then 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 Westchester

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

07/28/2018
(Dated)

Lori Ehrlich

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:
597b820d22e36955e4fbaeb4252f95b7

Electronically Signed

Your name: Lori Ehrlich
Signed on: 07/28/2018