

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

LI Chiropractic PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-17-1066-5959
Applicant's File No.	n/a
Insurer's Claim File No.	0477147690101046
NAIC No.	22055

**ARBITRATION AWARD**

I, James Hogan, 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: EIP

1. Hearing(s) held on 07/06/2018, 08/09/2018  
Declared closed by the arbitrator on 08/09/2018

Nicole Litchman from The Law Offices of Hillary Blumenthal P.C. participated by telephone for the Applicant

Nicole Jeffares from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,781.83**, 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

The EIP, a 22 year old male, was injured in a collision on 2/23/17. This claim is for is for EMG/NCS testing of the lower extremities administered on 4/7/17 by A. Mazurovsky, DC, and billed at \$1,076.11; Applicant also billed for EMG/NCS testing of the upper extremities on 4/7/17, billed at \$1,057.62.

**On 5/30/17, Respondent issued an NF-10 re DOS 4/7/17 and billing in the amount of \$1,076.10.** Respondent denied the Applicant's claim for EMG/NCS of the lower extremities based upon a peer review done by Ronald Csillag, DC, who opined that the testing was not medically necessary.

**On 5/30/17, Respondent issued an NF-10 re DOS 4/7/17 and billing in the amount of \$1,057.62.** Respondent paid \$351.89, leaving an amount in dispute of \$705.73. The EOB indicates that the Respondent is reimbursing the Applicant for 1 unit of EMG testing at \$165.19, which is the amount billed. As to the motor nerve conduction testing, billed under CPT code 95903, Respondent reimbursed Applicant for 1 unit at \$113.87; as to the sensory nerve conduction testing, Respondent reimbursed Applicant for 1 unit at \$72.83. The reason for the reduced reimbursement amount is the fee schedule.

#### 4. Findings, Conclusions, and Basis Therefor

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

##### **SUMMARY OF THE CASE:**

The EIP, a 22 year old male, was injured in a collision on 2/23/17. This claim is for is for EMG/NCS testing of the lower extremities administered on 4/7/17 by A. Mazurovsky, DC, and billed at \$1,076.11; Applicant also billed for EMG/NCS testing of the upper extremities on 4/7/17, billed at \$1,057.62.

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As per 11 NYCRR 65-4.2(b)(3)(iv) "Any additional submissions may be made only at the request or with approval of the arbitrator." As per the Initiation Letter, the parties were to have their respective positions uploaded on or before 8/21/17. "Documents received after this date will be marked 'late submission' and may not be considered by the arbitrator." The Applicant uploaded 2 Supplemental Submissions on 6/26/18. Since these Supplemental Submissions were late, and uploaded without permission, **they were not considered.**

##### **Applicant's submission:**

The Applicant has provided a copy of its billing. (see above)

In reviewing the Applicant's billing, I see that for the lower extremity EMG/NCS testing, the Applicant is billing for 4 nerves under CPT code 95903 (F wave study) for a total of \$455.46;

4 sensory nerve testing under CPT code 95904 for a total of \$291.31, and H Reflex testing for 2 nerves under CPT code 959344 total \$164.14.

As to the Applicant's billing for the upper extremities, it is billing for EMG testing under CPT code 95861 at \$165.19; Motor nerve testing with "F" wave study for 4 nerves under CPT code 95903 at \$455.46; as to the sensory nerve conduction study, 6 nerves were tested under CPT code 95904 for a total \$436.97.

**Affidavit of Karina Ivanova:** Ms. Ivanova is a biller for the Applicant. She recites what the Applicant billed for the upper extremity EMG/NCS testing and also what was paid by the Respondent. She states that the Respondent payment was incorrect and did not reflect the correct amounts billed.

**On 4/7/17, the EIP had an Initial Chiropractic Examination at the Applicant.** The EIP reported being involved in an MVA on 2/23/17. He presented with complaints of pain and stiffness in the neck that radiated to the bilateral shoulders; mid back pain; pain and stiffness in the lower back that radiates bilaterally, however it is not indicated as to whether this pain is radiating to the buttocks, groin, or either lower extremity. The form does indicate that the EIP has difficulty standing and sitting.

The EIP ambulates with pain.

DTRs were measured as follows: the left radial was "2" and the right radial was "1;" the biceps, triceps and Achilles were each "2" bilaterally. The patella was "1" on the left and "2" on the right.

The sensory examination has marks indicated at C3 through C7, bilaterally; in the lumbar area

there appears to be a down pointing arrow for the right from L1 through S1 and there are marks on all aspects of the left. We do not know and cannot tell what these marks signify. Some appear to be numbers, but they are illegible.

As to the motor examination, it appears that for the cervical, motor is 5/5 throughout, bilaterally. For the lumbar, motor appears to be "4" for the Psoas, bilaterally; for the Quads, it is "5" on the right and "4" on the left; the same is true for the tibialis ant.; Gluteus Med appears to be "5" bilaterally; the same is true for the hamstrings. For the P. Longus, we are assuming that the right is "5" and the left is "4."

There is a list of orthopedic tests. Foraminal Compression Test was positive, bilaterally; Lessegue Test (SLT) was positive, bilaterally; Kemp's Test was positive, bilaterally.

The range of motion for the cervical spine is quantified as reduced in all planes.

The range of motion for the thoracic spine is not measured.

The range of motion for the lumbar spine is quantified as reduced in all planes.

The Diagnosis was: 1) whiplash injury (cervical sprain/strain); 2) cervical subluxation due to injury; 3) cervical disc displacement (herniation); 4) cervical radiculopathy; 5) lumbar sprain/strain; 6) lumbar disc herniation (syndrome); 7) lumbar spine radiculopathy; 8) lumbar joint dysfunction.

The report indicates the findings of the MRI of the cervical spine as bulging discs and a herniation at C5-6. The MRI of the lumbar spine was positive for multiple bulging discs.

The Treatment Plan call for EMG/NCV testing to clarify the differential diagnosis and rule in/out radiculopathy, peripheral neuropathy, plexopathy and myopathy.

This report has a Pain Diagram which indicates that the EIP was experiencing pain in the cervical area which appears to be radiating to the left shoulder and arm; pain in the lumbar area which appears to be radiating to the bilateral buttocks.

**The Applicant has provided a copy of the reports for the EMG/NCS testing of the upper and lower extremities administered on 4/7/17.**

The testing of the lower extremities had an "Impression" of electrophysiological findings consistent with left L5-S1 radiculopathy. As to the testing of the upper extremities, the results were within normal limits.

The raw data for each report has been provided.

The Applicant's submission contains a copy of the **MRI report for the cervical spine** which showed a bulging disc at C4-5, without stenosis and the disc herniation at C5-6 with thecal sac indentation.

**The MRI report for the lumbar spine** showed bulging discs at L2-3, and L3-4, without stenosis, and a bulging disc at L4-5 with mild bilateral foraminal stenosis in association with facet joint hypertrophy.

**The Applicant's submission contains an initial evaluation done by Eldar Kadymoff Medical, PC on 2/27/17.** The EIP reported being involved in an MVA on 2/23/17. He had complaints of headache, neck pain, and upper extremity pain including left shoulder, left elbow and left wrist.

The physical examination indicates that the EIP's neurological examination was, essentially, normal. DTRs were 2+ on the right side in the upper extremities and bilaterally in the lower extremities. As to the left side in the upper extremities, there is a handwritten note that says "cannot evaluate."

This sensory examination was intact to light touch and vibration.

The range of motion of the cervical spine was quantified as reduced in all planes. Spurling test was positive, bilaterally. Tenderness was noted at C2, C7, T3 and T8.

The examination of the upper extremities indicates that the range of motion on the right side was within normal limits and for the left side, there is a notation "can not evaluate" there is also an indication that there was a complaint of pain.

Muscle testing appears to be 5/5 for the right side and for the left side there are downward pointing arrows.

There are handwritten notes which are illegible. However, we can determine that testing was not administered as there is a handwritten note "can not evaluate."

The range of motion for the lumbar spine was quantified as reduced in all planes.

SLR was positive on the right at 45° and positive on the left at 50°. Tenderness was noted but the handwritten note is illegible.

The examination of the lower extremities indicates that the range of motion was within normal limits and muscle strength was 5/5 throughout the bilateral lower extremities. All of the provocative orthopedic testing was negative.

The EIP had an antalgic gait.

The Impression was: 1) posttraumatic headache; 2) contusion of chest wall; 3) cervical sprain/strain; 4) lumbar-sacral sprain/strain; 5) left shoulder contusion; 6) left elbow contusion; 7) right wrist *illegible*; 8) left upper limb *illegible*.

**The Plan** call for ibuprofen and a referral to an orthopedist as soon as possible. In addition, physical therapy will be initiated. The patient was told to avoid heavy lifting, pulling and pushing. Reevaluation 4 weeks.

**The Applicant's submission contains a re-evaluation done by Eldar Kadymoff Medical, PC on 3/27/17.** The EIP is complaining of pain in the mid and lower back which is intermittent as well as left shoulder pain which is slightly better; left knee pain is a new complaint; pain in the left elbow, left wrist and left hand are all slightly better.

The range of motion of the cervical spine is indicated as "decreased" and not quantified. There was moderate tenderness to the cervical paraspinals.

The range of motion to the left shoulder was also indicated as "decreased" and there are measurements for abduction at 100/180 and flexion at 120/180. There was tenderness over the deltoids.

As the thoracic and lumbar spine, the range of motion is indicated as "decreased" but not quantified.

The range of motion for the left knee was also indicated as "decreased" but not quantified; McMurray, Valgus and Varus were all negative. There was tenderness and stiffness.

As to the left elbow, left wrist and left hand, the notation indicates that the range of motion has increased and the pain has decreased.

The Impression was: 1) cervical sprain/strain; 2) R/O cervical radiculitis; 3) lumbar-sacral sprain/strain; 4) R/O lumbar radiculitis; 5) left shoulder contusion; 6) left knee contusion; 7) contusion of the left elbow and left wrist; 8) left upper limb pain; 9) thoracic sprain/strain.

The Plan called for a neurological consultation and continue with physical therapy.

**Respondent's submission:**

The Respondent's position is that part of the Applicant's claim was properly paid at the fee schedule while the remaining part of the Applicant's claim was denied based upon a peer review done by Ronald Csillag, DC.

The Respondent has provided a copy of the Applicant's billing along with a copy of the test results and the raw data for the upper and lower extremity testing.

Also provided were the Respondent's corresponding NF-10s.

**Peer Review:**

Ronald Csillag, DC, did a peer review on 5/25/17. The purpose of the review was to determine the medical necessity for the EMG/NCS testing of the lower extremities administered by the Applicant 4/7/17.

There is a list of medical records that were reviewed. These include the 4/7/17 evaluation by the Applicant.

Dr. Csillag recounts the EIP's accident history and refers to the 3/20/17 chiropractic evaluation by Demetrios Karakizis, DC. He outlines the findings of that examination and noticed that the recommendation was for a program of chiropractic care.

The EIP was evaluated by the Applicant on 4/7/17. At that time there were complaints of neck pain and stiffness radiating to the left shoulder, mid back pain and low back pain. All DTRs were rated with the exception of the right radial and left patella reflex. There is a report of decreased sensory testing on the left at L5 and the right at C5. Motor strength is graded at 5 for the upper extremities and there is bilateral grading of 4 for the psoas and on the left a grading of 4 for the quadriceps and tibialis anterior along with peroneus longus. The positive orthopedic testing is recited. The diagnosis is also recited. The recommendation was for EMG/NCV testing.

In the Conclusion section of his report, Dr. Csillag says that based upon a review of the records there is no indication for the electrodiagnostic studies done on 4/7/17.

"I would note that these are specialized diagnostic testing procedures intended to be used as an extension of a detailed physical examination when there is a reasonable clinical suspicion of conditions requiring such studies in order to establish an appropriate treatment plan. There was no precise explanation regarding exactly how the performance of these tests caused the physician to change this claimant's treating regiment. Were modalities added or subtracted?"

He then refers to a 2004 article found in Muscle Nerve, "EMG is of little help in predicting symptomatic outcome in radiculopathy... EMG has less prognostic value than other clinical and psychosocial factors... The prognostic utility of EMG is likely limited by its poor correlation with pain, a major determinant of disability."

Dr. Csillag then says that according to the standards of care established by the US Department of HHS, National Guideline Clearinghouse - Guidelines Summary, NCG-10121, updated July 2014, F-wave testing was not recommended.

As per Dr. Csillag, "For the most part conservative treatments are not altered depending upon the results of electrodiagnostic tests. Following a patient closely, and monitoring their response to conservative treatment, is the best way to assess efficacy of a treatment regimen and determine a need for adjustments in a conservative treatment program."

He then refers to a 2013 article found in Neuro. Clin Pract., entitled "EMG/NCS in the Evaluation of Spine Trauma with Radicular Symptoms" wherein he discusses when EMG/NCS testing is appropriate. He says that there is very little evidence to support this type of testing for spine trauma with radicular symptoms.

Dr. Csillag then refers to an article from the NY Chiropractic College, Continuing Education, entitled "Documentation, Record Keeping, Practice Guidelines and Clinical Issues in Chiropractic Practice." "The standard for taking or ordering a special test include the following: that the test will provide you with data or new information that could change the diagnosis or significantly alter the treatment plan. If the test is for detailed objective measurements, are those tests crucial to monitor progress or can the information be approximated by subjective reports or visual analog. If gross assessment is a reasonable indicator, then more extensive measurements are not necessary."

Dr. Csillag concludes that the testing issue is not medically necessary.

The Respondent submission contains copies of the documents reviewed by Dr. Csillag for his peer review.

The Respondent had provided copies of the articles relied upon by Dr Csillag in his peer review.

**At the hearing:**

Applicant relied upon its submission and the records of the treating doctors.

Respondent relied upon the peer review, noting that the testing was not medically necessary. There was no change in the EIP's treatment after the testing was done.

**FINDINGS:**

The Applicant has established its prima facie case.

This claim is for is for EMG/NCS testing of the lower extremities administered on 4/7/17 by A. Mazurovsky, DC, and billed at \$1,076.11; Applicant also billed for EMG/NCS testing of the upper extremities on 4/7/17, billed at \$1,057.62.

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In the Respondent's NF-10 for the upper extremity testing, the Respondent indicates that only 1 unit of motor testing was billed and 1 unit of sensory testing was billed, and Respondent paid at the fee schedule rate for those single units. However, the Respondent did not accurately pick up the amount billed.



**The portion of the claim dealing with the upper extremity EMG/NCS testing is awarded in the amount of \$705.73.**

As of that portion of the claim denied based upon the peer review, a review of the 4/7/17 initial evaluation by the Applicant does not indicate any ongoing neurological deficits which would require the EMG/NCS testing at issue.

There is no indication that Dr. Mazurovsky reviewed any of the other medical reports generated by healthcare professionals who saw the EIP prior to his 4/7/17 evaluation. Therefore, any neurological deficits noted in the 4/7/17 report are actually a baseline for any further evaluations done on this EIP by this provider.

After reviewing the documents contained in the file and listening to the arguments of the parties at the hearing, I have concluded that this portion of the Applicant's claim is denied.

**The Applicant's claim is awarded in the amount of \$705.73.**

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
	LI Chiropractic	04/07/17 -	\$1,781.83	Awarded:

	PC	04/07/17		\$705.73
<b>Total</b>			<b>\$1,781.83</b>	<b>Awarded: \$705.73</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 06/30/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 6/30/17 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor. **Interest was stayed effective 7/6/18** since there was a request for an adjournment from the Applicant due to a change in attorney.

C. Attorney's Fees

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

The insurer shall pay the Applicant's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 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 Suffolk

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

08/10/2018  
(Dated)

James Hogan

## **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:**  
4855706edd47a1e3fa5cd1f74b8613bd

### **Electronically Signed**

Your name: James Hogan  
Signed on: 08/10/2018