

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Specialty Surgery of Secaucus LLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-17-1072-8088
Applicant's File No.	FDNY17-22753
Insurer's Claim File No.	0421950020101074
NAIC No.	35882

ARBITRATION AWARD

I, Deepak Sohi, 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 08/30/2018
Declared closed by the arbitrator on 08/30/2018

Zarah Naqvi from Fass & D'Agostino, P.C. participated in person for the Applicant

Jaime Orlando from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,119.96**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended to \$1,066.14, in accordance with the New Jersey Automobile Medical Fee Schedule.

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

3. Summary of Issues in Dispute

This arbitration arises out of medical treatment, specifically a cervical epidural steroid injection (CESI) and trigger point injections (TPI), provided to the EIP, a 31-year-old male, who was involved in a motor vehicle accident as a driver on 1/28/2017. Applicant is seeking

reimbursement of facility fees for the CESI and TPI's provided to the EIP on date of service 5/24/2017. Respondent denied reimbursement of the facility fees for the CESI and TPI's based on the Independent Medical Peer Review performed by Dr. Jay M. Weiss, MD, dated 6/20/2017.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

MEDICAL NECESSITY

CERVICAL EPIDURAL STEROID INJECTION & TRIGGER POINT INJECTIONS - DATE OF SERVICE 5/24/2017

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud. Dists.]). The burden shifts to the Respondent to prove that the services were not medically necessary.

If an insurer asserts that a medical test, treatment, supply or other service was not medically necessary, 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 & 11th Jud. Dists. 2003]).

In support of its denial, the Respondent submitted the Independent Medical Peer Review report of Dr. Jay M. Weiss, MD, dated 6/20/2017. It was Dr. Weiss's determination that the standard of care for medical necessity of the CESI's and TPI's had not been met. To support that determination, Dr. Weiss states, "In fact, the New York State Neck Injury Medical Treatment Guidelines specifically note that, '[e]pidural injections are not effective for cervical axial pain or non-radicular pain syndrome and they are not recommended for this indication. Please see: New York Neck Injury Medical Treatment Guidelines, Second Edition, January 14, 2013, D.3.a.i.". Based on the records reviewed, Dr. Weiss continues, "The claimant had neck and back pain radiating to all four extremities. There was no specific radicular distribution to the cervical or lumbar complaints, but these pains were radiating to all four extremities without any specific distribution, although more on the left than the right. Furthermore, there were no upper extremity abnormalities of strength, sensation or reflexes or even upper extremity assessment of strength, sensation or reflexes. For non-radicular pain and without even a high enough index for suspicion to perform a neurologic evaluation, cervical epidural injections would not be indicated. Furthermore, the injection was performed based on an outdated examination from one and half months earlier without regards to the clinical status around the time of the 5/24/17 injection. There were also no actual focal trigger points noted to be present. Trigger points are not merely areas of diffuse tenderness but have specific criteria. In fact, trigger point injections and trigger points are defined in the medical literature. These are not merely areas of tenderness or spasm, but have specific criteria. According to Weiss, Silver, Lennard & Weiss, in Easy Injections, 2007, Butterworth-Heinemann/Elsevier, Chapter 7, they note that trigger points are described as discrete, focal, hyperirritable spots that are usually in a taut band of muscle but may be found in ligaments, periosteum tendons and pericapsular areas. Trigger points are called such because they trigger or refer pain into a specific distant area called a reference pain zone. The referred pain from trigger points is generally predictable and these patterns are mapped in trigger point manuals. According to New York State in the Neck Injury Medical Treatment Guidelines, 'trigger point injections are indicated in those patients where well-circumscribed trigger points have been consistently observed, demonstrating a local twitch response, characteristic radiation of pain pattern and local autonomic reaction, such as persistent hyperemia following palpation. Generally, these injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a six-week timeframe. Please see: New York State Workers' Compensation Board Neck Injury Medical Treatment Guidelines, June 30, 2010, D.3.c. ii. Based on the records reviewed here, the procedures were not medically

necessary". Furthermore, even if trigger points were present, and if there was a possibility of cervical radiculopathy, it would be appropriate to perform the least invasive and potentially least dangerous procedure that is likely to be beneficial (trigger point injections) prior to performing more invasive and potentially more dangerous procedures (epidural steroid injection). Based on the records reviewed, it is Dr. Weiss' determination that the cervical epidural injections and trigger point injections performed on date of service 5/24/2017 were not medically necessary.

I find that Dr. Weiss has stated a factual basis and medical rationale for his determination that the CESI & TPI's were not medically necessary. Dr. Weiss summarizes the generally accepted standard, supports that standard with citations to medical articles, and applies that standard to this particular EIP. I find, that with this peer review report, the Respondent has presented more than sufficient evidence to satisfy its burden with regard to establishing that the CESI & TPI's herein lack medical necessity. Thus, the burden has shifted to the Applicant, who bears the ultimate burden of persuasion.

Where the Respondent presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden then shifts to the Applicant which must then present its own evidence of medical necessity. [see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed)], Andrew Carothers, M.D., P.C. v. GEICO Indemnity Company, 2008 NY Slip Op 50456U, 18 Misc. 3d 1147 [A], 2008 N.Y. Misc. LEXIS 1121, West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co. 13 Misc.3d 131 [A], 824 N.Y.S.2d 759, 2006 NY Slip Op 51871 (U) 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06)].

Applicant did not submit a formal rebuttal to Respondent's peer review report. Instead it relies on an initial evaluation report, dated 2/8/2017, a follow-up evaluation report, dated 4/12/2017, by Dr. Clifton Burt, MD, the treating surgeon, operative reports, and MRI reports of the cervical and lumbar spine, to rebut the findings of the peer review and to support the medical necessity of the CESI & TPI's.

After reviewing these reports, in light of Dr. Weiss' peer review, noted above, I find that the initial, follow-up, operative, and MRI reports do not properly rebut the findings of Dr. Weiss' peer review. There was no specific radicular distribution to the cervical or lumbar complaints, but these pains

were radiating to all four extremities without any specific distribution, although more on the left than the right. Furthermore, there were no upper extremity abnormalities of strength, sensation or reflexes or even upper extremity assessment of strength, sensation or reflexes. For non-radicular pain and without even a high enough index for suspicion to perform a neurologic evaluation, cervical epidural injections would not be indicated. Furthermore, the injection was performed based on an outdated examination from one and half months earlier without regards to the clinical status around the time of the 5/24/17 injection. There were also no actual focal trigger points noted to be present. However, the Applicant now bears the burden of proof with regard to establishing the medical necessity of CESI & TPI's in question. I find the Applicant has not done so with respect to the medical necessity of the CESI & TPI's in this case as the medical record fails to rebut the peer review or support the medical necessity for the CESI & TPI's.

After a careful review of the records and consideration of the parties' oral arguments, and comparing the relevant evidence presented by both parties against each other and the above referenced standards, I find the Applicant has not met its burden of persuasion of rebuttal. Therefore, the CESI & TPI's provided for on date of service 5/24/2017 are hereby denied.

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 claim is DENIED in its entirety

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

09/10/2018

(Dated)

Deepak Sohi

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:
7c4fd1afd5d20cc17e5055cfbb3cc423

Electronically Signed

Your name: Deepak Sohi
Signed on: 09/10/2018