

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pinnacle Orthopedic & Spine Specialists
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-17-1065-2004
Applicant's File No. 022-17-008
Insurer's Claim File No. 0432740260101018
NAIC No. 35882

ARBITRATION AWARD

I, Tasha Dandridge-Richburg, 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 09/24/2018
Declared closed by the arbitrator on 09/24/2018

Pasquale V. Bochiechio, Esq. from Pasquale V. Bochiechio, P.C. participated by telephone for the Applicant

Jason Ciani, Esq. from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 948.06**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced the amount at issue to \$770.77 in an amended AR1.

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

3. Summary of Issues in Dispute

The 38 year-old EIP was involved in a motor vehicle accident on January 14, 2013. At issue in this case is \$770.77 for physical therapy for the EIP's right wrist and knee from February 20, 2014 to January 29, 2015. Bills for dates of service prior to August 5, 2014, were partially paid based upon Respondent's interpretation of the Workers'

Compensation Fees Schedule. The bills for dates of service following August 5, 2014, were denied based upon an independent medical examination (IME) by Edward Mills, MD on July 28, 2014.

4. Findings, Conclusions, and Basis Therefor

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. The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations. This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments by or on behalf of the parties and any testimony given during the hearing.

DR. MILLS' IME

On July 28, 2014, Dr. Mills conducted an orthopedic IME of the EIP. Dr. Mills previously examined the EIP on March 17, 2014 and May 19, 2014. Dr. Mills concluded following his examination and review of records that further physical therapy was not medically necessary. He opined that the EIP should perform HEP for her right wrist to help increase range of motion, but, otherwise she had reached a healing plateau in the orthopedic specialty and needed no further orthopedic care. There was no need for household help, durable medical equipment, diagnostic tests or special transportation. There is no indication for massage therapy or surgery. Dr. Mills' examination of the EIP's right wrist revealed significant limitations of motion. Dr. Mills noted that the EIP's right knee condition had resolved at the time of his prior examination. Dr. Mills examination of the EIP's right knee at the time of his March 17, 2014 examination reveal significant limitations of motion of the knee. At that time he opined no further treatment was needed to the right knee as there were no objective findings to substantiate the decreased range of motion.

ANALYSIS

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s). *Amaze Medical Supply, Inc. v. Eagle Ins. Co.*, 2 Misc. 3d 128A (App. Term, 2nd Dept., 2003); *Tahir v. Progressive Cas. Ins. Co.*, 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); *Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); *Millennium Radiology, P.C. v. New York Cent. Mut.*, 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); *Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co.*, 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); *All*

Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Mills' IME fails to set forth a clear factual basis and a medical rationale for Respondent's denials of Applicant's claims for the treatment in dispute herein and as such, I find that Respondent has failed to establish a lack of medical necessity for same. According to Dr. Mills's report his examination of the EIP's wrist and knee during his prior examination, revealed significant limitations motion, yet Dr. Mills opined that her right knee condition had resolved. The EIP told Dr. Mills that she was pending right knee surgery and subsequent to the IME, she underwent right knee surgery. The EIP had undergone right wrist surgery in February of 2014. I find that Dr. Mills's report, which reveals positive findings with respect to the EIP's right wrist and knee which Dr. Mills does not attribute to another cause, is insufficient to meet Respondent's burden of proving the treatment was not medically necessary. Therefore, Respondent's denials cannot be upheld.

RESPONDENT'S FEE SCHEDULE ARGUMENT

Respondent argued that pursuant to a plain reading of the Workers' Compensation Fee Schedule and the 8 unit rule reimbursement for dates of service 12/10/14, 12/17/14, and 12/30/14 were limited to \$54.40(\$6.80 x 8.0). I agree with Respondent's interpretation.

ACCORDINGLY, APPLICANT IS AWARDED \$723.61, TOGETHER WITH INTEREST AND ATTORNEY'S FEES.

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
	Pinnacle Orthopedic & Spine Specialists	02/20/14 - 01/29/15	\$948.06	\$770.77	Awarded: \$723.61
Total			\$948.06		Awarded: \$723.61

B. The insurer shall also compute and pay the applicant interest set forth below. 06/23/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30 day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co.*, 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$1360." *Id.* However, 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 Erie

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

09/25/2018
(Dated)

Tasha Dandridge-Richburg

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:
cca6b679321263dc66d6f23b8c9f9d78

Electronically Signed

Your name: Tasha Dandridge-Richburg
Signed on: 09/25/2018