

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Lenox Hill Hospital (NSUH) , North Shore  
LIJ Medical (NSUH)  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-17-1060-7564
Applicant's File No.	RFAMUL17-539
Insurer's Claim File No.	0505142000101022
NAIC No.	41491

**ARBITRATION AWARD**

I, Neal S. Dobshinsky, 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 10/17/2018  
Declared closed by the arbitrator on 10/17/2018

Helen Feingerish, Esq. from Russell Friedman & Associates LLP participated in person for the Applicant

Danielle Axelrad, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 874.44**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated to Applicants' prima facie case, Respondent's timely denials, and that there are no fee schedule issues.

3. Summary of Issues in Dispute

Applicants performed and interpreted a brain stem MRI. Were these services medically necessary?

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

I have reviewed the materials in the American Arbitration Association's ADR Center case file and considered the parties' oral arguments. I find as follows:

On 12/29/2014 the Assignor, a female, age 23, was a driver of a motor vehicle that was involved in an accident. Thereafter, Assignor was treated at a hospital emergency department and by various medical providers. Louis C. Rose, MD, a board certified orthopedic surgeon was among the providers Assignor saw.

Respondent insurer's submissions include Dr. Rose's office notes. Those notes document Assignor's complaints of headache on 12/30/14, 1/5/15, 3/31/15 and 9/15/15. There is a note about headaches in a medical record dated 10/20/16.

On 12/2/16, Assignor saw Nicky Bhatia, MD, a neurologist, on referral from another doctor for evaluation of headache. Assignor reported headaches since the 12/29/14 accident. The accident vary in duration and location. It appears that Dr. Bhatia did a neurologic and his impression was chronic post-traumatic headaches; multimodal headaches, pseudo-migraine type. Because of the chronicity and multiplicity of headache type, Dr. Bhatia ordered a brain MRI as a precaution.

On 12/9/16 Applicants performed and interpreted the MRI. Applicants timely submitted their claims for no-fault benefits for the payment for the services rendered. Respondent insurer timely denied Applicants' claim for payment for lack of medical necessity based on a peer review report. The issue submitted and argued in arbitration was the medical necessity for the MRI.

#### Medical Necessity and the Burden of Proof Under No-Fault

Under New York No Fault law, an applicant for no-fault benefits establishes its prima facie case by submitting evidentiary proof that the prescribed statutory billing forms had been mailed to and received by the insurer, and that payment of the benefits is overdue. Insurance Law §5106[a]; *Mary Immaculate Hosp. v Allstate Ins. Co.*, 5 AD3d 742, 743 [2d Dept 2004], *Viviane Etienne Med. Care v Country-Wide Ins. Co.*, 25 NY3d 498, 501 [2015].

Medical necessity for services or supplies is established by applicant's claim form itself (citations omitted). *All County Open MRI & Diagn. Radiology P.C. v Travelers Ins. Co.*, 11 Misc3d 131(A), 2006 N.Y. Slip Op. 50318[U] [App Term, 2d Dept 9th & 10th Jud Dists 2006].

Because medical necessity for services or supplies is established by the applicant's claim form itself, the insurer "bears both the burden of production and persuasion" as to its defense of lack of medical necessity. *Nir v Allstate Ins. Co.*, 7 Misc3d 544, 546 [Civ Ct, Kings County 2005]. The defense must be supported by a peer review report or other evidence, such as an independent medical examination report.

The report must set forth a sufficiently detailed factual basis and medical rationale for the denial. *Amaze Med. Supply v Eagle Ins. Co.*, 2 Misc3d 128(A), 2003 NY Slip Op 51701[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2003].

"[H]owever, it is the [applicant] who has the ultimate burden of proving, by a preponderance of the evidence, that the services at issue were medically necessary (citations omitted)." *Radiology Today, P.C. v Geico Ins. Co.*, 58 Misc 3d 132(A) n, 2017 NY Slip Op 51768[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017].

#### The Peer Review Report

Respondent insurer shows that it submitted various medical records concerning Assignor for review to Edward M. Weiland, MD a third party, board certified neurologist. Dr. Weiland expresses his opinion as to the medical necessity for the MRI in an affirmed report dated 1/16/2017. Dr. Weiland opines that there was no medical necessity for the MRI and that payment should be disallowed.

Dr. Weiland says he reviewed the Assignor's medical records. He states that there was no report of head trauma or loss of consciousness at the time of the accident; however, the Assignor has been experiencing headaches. Dr. Weiland discusses Dr. Bahatia record and says that it was a completely normal neurologic examination, approximately two years after the accident. Dr. Weiland states that Dr. Rose's medical records "did not indicate that there were any subjective complaints of headaches several months after the incident date," but, as noted above from a review of the Respondent's own submission, that is not correct.

Dr. Weiland mentions the ODG-TWC treatment , Integrated Treatment/Disability Duration Guidelines, but he does not show how these guidelines relates to Assignor's complaints of chronic headaches, two years after the accident. He does not state what the appropriate standard of care is or how performing an MRI on the Assignor deviates from that standard. Dr. Weiland cites to the AMA definition of medical necessity, but he does not show how that definition was disregarded in this case.

On the contrary, since there was no obvious cause for the Assignor's headaches, it appears reasonable as stated by Dr. Bhatia "it would be advisable as a precaution to get a brain MRI."

In this case, the peer review report does not set forth a detailed factual basis and adequate medical rationale for the insurer's denial.

#### Conclusion

Based on the submissions of the parties, their arguments, and the relevant law, I conclude that the insurer has not overcome the presumption of medical necessity for the services rendered by Applicants. Applicants are entitled to payment on their claims.

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
	<b>Lenox Hill Hospital (NSUH)</b>	<b>12/09/16 - 12/09/16</b>	<b>\$699.55</b>	<b>Awarded: \$699.55</b>
	<b>North Shore LIJ Medical (NSUH)</b>	<b>12/09/16 - 12/09/16</b>	<b>\$174.89</b>	<b>Awarded: \$174.89</b>
<b>Total</b>			<b>\$874.44</b>	<b>Awarded: \$874.44</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/08/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed and paid at the rate of two percent per month, calculated on a pro rata basis using a 30-day month. With respect to the claim herein, interest runs from 8/8/2017, the date Applicant requested arbitration by filing with the AAA through date of payment of the claim. 11 NYCRR §65-3.9(a)(c).

C. Attorney's Fees

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

The Applicant's attorney's fee shall be paid in an amount equal to 20% of the total amount awarded in this arbitration, plus interest. 11 NYCRR §65-4.6(d).

- 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 Nassau

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

11/16/2018  
(Dated)

Neal S. Dobshinsky

**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:**  
925809686cfec7d770b6ad916d308779

### Electronically Signed

Your name: Neal S. Dobshinsky  
Signed on: 11/16/2018