

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Quality Laboratory Service  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-18-1087-2087
Applicant's File No.	TM-18-2507
Insurer's Claim File No.	0107717640101110
NAIC No.	35882

### **ARBITRATION AWARD**

I, Nada Saxon, 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 11/20/2018  
Declared closed by the arbitrator on 11/20/2018

Naomie Jean-Philippe from Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP participated in person for the Applicant

Alison Chulis from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,145.38**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended its claim to \$2,021.99 in accordance with its interpretation of the fee schedule.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault benefits and to the timeliness of the Respondent's denials.

3. Summary of Issues in Dispute

Whether Respondent has established its defense based upon a lack of medical necessity.

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

This case was conducted using the documents submitted by the parties in the ADR Center, maintained by the American Arbitration Association, and the oral arguments of the parties. Any documents in the ADR Center are hereby incorporated into this hearing. I have reviewed all the relevant documents. No witnesses testified at this hearing.

Any further issues raised in the hearing record are held to be moot and/or waived insofar as not specifically raised at the time of the hearing.

The Assignor (GC) was a 45-year-old male involved in an accident on 2/10/16. Applicant seeks reimbursement for services provided on 6/6/17. Respondent denied the claims based upon independent medical examinations (IME) performed by Dr. Kiernan and Dr. Sposta on 6/23/16.

#### **IME Defense**

An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. Ying Eastern Acupuncture, P.C. v. Global Liberty Ins., 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008). If the IME report provides a factual basis and medical rationale for an opinion that services were not medically necessary, and the claimant fails to present any evidence to refute that showing, the claim should be denied, AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A), (App. Term 2d & 11th Dist. Feb. 9, 2002), as the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994).

Where the IME report submitted by the insurer sets forth a factual basis and medical rationale for the conclusion that the assignor's injuries were resolved and that the treatment which is the subject of the claim lacked medical necessity, the report submitted in opposition must meaningfully refer to and rebut the IME findings. E.g., Premier Health Choice Chiropractic, P.C. v. Praetorian Ins. Co., 41 Misc.3d 133(A), 981 N.Y.S.2d 638 (Table), 2013 N.Y. Slip Op. 51802(U), 2013 WL 5861532 (App. Term 1st Dept. Oct. 30, 2013).

On 6/23/16, Dr. Howard Kiernan performed orthopedic examination of Assignor. There was normal range of motion in the cervical spine, lumbar spine and shoulders. There was no spasm or tenderness reported. Neurological testing was normal. Straight leg raising test and spurling's test were also normal. I note that Dr. Kiernan previously examined Assignor on 5/12/16 and recommended additional physical therapy to the neck and back. On 6/23/16, Dr. Kiernan concluded Assignor's injuries had resolved and no further orthopedic treatment, including physical therapy, was necessary.

On 6/23/16, Dr. Daniel Sposta performed a chiropractic examination of Assignor. There was normal range of motion in the cervical spine, lumbar spine and left shoulder. There was no spasm or tenderness reported. Neurological testing was normal. Orthopedic testing was also normal. Dr. Sposta concluded Assignor's injuries had resolved and no further chiropractic treatment was necessary.

I find the IME reports sufficient to establish Respondent's lack of medical necessity defense. The burden now shifts to the Applicant as it is the Applicant's burden, ultimately, to establish the medical necessity of the services at issue. See Insurance Law § 5102; Shtarkman v. Allstate Insurance Co., 2002 NY Slip Op 50568(U), 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a medical provider was medically necessary is on the latter, not the insurance company). The insured or the provider bears the burden of persuasion on the question of medical necessity. Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 NY Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005).

Applicant does not submit any rebuttal report or contemporaneous examinations that rebut the IME findings. Furthermore, Applicant's report dated 6/6/17 reflects that a urinalysis was performed, however it is unclear why it was needed or performed. There are no exam findings reported on the 6/6/17 report. This service was provided almost a year after the IME with no discussion as to what occurred during this one-year gap.

Therefore, based on the totality of the evidence, I am more persuaded by the findings of the IMEs showing that Assignor's condition had resolved and the further treatment in dispute herein was not necessary.

Accordingly, Applicant's claim is 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, Nada Saxon, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

11/20/2018  
(Dated)

Nada Saxon

#### **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:**  
490799bb24eefc2ee5590b57c67e1639

**Electronically Signed**

Your name: Nada Saxon  
Signed on: 11/20/2018