

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. | 17-18-1087-4303 |
| Applicant's File No. | TM-18-2497 |
| Insurer's Claim File No. | 0439410230101059 |
| NAIC No. | 35882 |

ARBITRATION AWARD

I, Ellen Cutler-Igoe, 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 01/11/2019
Declared closed by the arbitrator on 01/11/2019

Cliff Ryan, Esq. from Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP participated in person for the Applicant

Kathleen Coggins, Esq. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 655.28**, 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

Whether Applicant is entitled to additional payment for services provided to Assignor on May, 17, 2017 as a result of injuries Assignor sustained in a motor vehicle accident on February 21, 2017. Respondent defended its reimbursement rate predicted upon Applicant's agreement with MagnaCare as a Preferred Provider Agreement.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents uploaded to the Electronic Case Folder. I have reviewed all submissions contained therein.

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 claim arises out of injuries Assignor sustained in a motor vehicle accident on February 21, 2017 for which Applicant provided medical services and filed this claim for payment integral to such dated May 17, 2017. Respondent partially reimbursed Applicant for the services in issue predicated upon a Provider Participation Agreement effective August 1, 2008 and subsequently amended on January 13, 2013. In support of its defense, Respondent proffered an affidavit by Nydia Flores, employee of Magnacare Administrative Services, summarizing its business practices and Applicant's agreed upon contract with Magnacare. Moreover, Respondent provided fee associated with CPT Codes Applicant would have been aware were assigned to its services. Applicant rested on the record.

In an opinion Letter dated February 2, 2009, the Insurance Department (no known as the Department of Financial Services), spoke directly on the issue of PPO reductions. The Insurance Department found that "a health care provider may accept reimbursement in an amount less than the maximum permissible fees as payment in full from the no-fault insurer." The Insurance Department specifically found that where providers are reimbursed a rate lesser than the Workers' Compensation Fee Schedule per the provider's PPO contract, the reduction does not violate Insurance Law §5108(a). However, Respondent maintains the burden of coming forward with competent evidentiary proof to support its fee schedule defense. See, Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). An insurer who raises a fee schedule defense, will prevail if it demonstrates that it was correct in its reading of the fee schedules. See, Jesa Medical Supply Inc. a/a/o Fransico v. GEICO, 2009 N.Y. Slip Op. 29386, 25 Misc.3d 1098, 887 N.Y.S.2d 482 (Civil Court, Kings Co. 2009). If Respondent fails to demonstrate by competent evidentiary proof that a [medical provider] claims were more than the appropriate fee schedules, [the insurer's] defense of noncompliance with the appropriate fee schedules cannot be sustained. See, Continental Medical, PC v. Travelers Indemnity Co., 11 Misc.3d 145(A), 819 N.Y.S. 2d 847, 2006 NY Slip Op. 50841(U), 2006 N.Y. Misc. LEXIS 1109 (App. Term 1st Dept. 2006).

Upon due consideration, a thorough review of the record and position statements presented during the hearing process, Respondent has persuasively met its burden of proof and without question established Applicant's participation in a Preferred Provider Agreement (aka "PPO") for which the herein services in dispute were appropriately paid. Applicant did not present refutation evidence.

Accordingly, for the foregoing reasons, 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, Ellen Cutler-Igoe, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

01/20/2019
(Dated)

Ellen Cutler-Igoe

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:
247cc8e482205c76b8d5cbeb7caff5e2

Electronically Signed

Your name: Ellen Cutler-Igoe
Signed on: 01/20/2019