

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

5 Borough Anesthesia  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-18-1093-6102
Applicant's File No.	None
Insurer's Claim File No.	0230053010101153
NAIC No.	35882

**ARBITRATION AWARD**

I, Robyn McAllister, 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 02/05/2019  
Declared closed by the arbitrator on 02/05/2019

MARC SCHWARTZ, ESQ. from Cean Owens Law Group PLLC participated in person for the Applicant

ALEXANDRA BRANCATO, ESQ. from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 695.31**, was AMENDED and permitted by the arbitrator at the oral hearing.

**Applicant reduced its claim to comply with Respondent's fee audit. The new amount claimed is \$189.07.**

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

3. Summary of Issues in Dispute

**Whether Respondent properly denied Applicant's claim for providing anesthesia during the performance of lumbar facet and SI joint injections for Assignor, a 49 year-old female driver, in connection with treatment of injuries allegedly sustained**

**in a motor vehicle accident on March 17, 2017, based on a peer review by Dr. Jay Weiss.**

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

**Applicant sought reimbursement in the amount of \$189.07 for providing anesthesia during the performance of lumbar facet and SI joint injections on February 8, 2018 for Assignor, a 49 year-old female driver, in connection with treatment of injuries allegedly sustained in a motor vehicle accident on March 17, 2017. Respondent timely denied Applicant's claim predicated on a peer review by Dr. Jay Weiss.**

**This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. At the hearing, Respondent argued that it properly denied Applicant's claim for the injections since the services rendered were not medically necessary. I disagree. I was not persuaded by the peer review report by Dr. Jay Weiss, submitted by Respondent in support of its denials. Dr. Weiss noted that the same facet and SI joint injections were performed by Dr. Cean on July 27, 2017 and November 30, 2017. Dr. Weiss asserted that there was no examination performed between the November 30, 2017 examination until the third set of injections on February 8, 2018. Dr. Weiss also asserted that there was insufficient evidence of full relief from the injections to warrant the performance of a third set of injections. He also argued that by performing the SI injection at the same time as the facet injections, the diagnostic value of the facet injection was diminished. Dr. Weiss noted that according to the Workers' Compensation Mid and Low Back Injury Medical Treatment Guidelines, facet injections "may be recommended for patients with chronic back pain that is significantly exacerbated by extension and rotation or associated with lumbar rigidity and not alleviated with other conservative treatments (e.g. medication, aerobic exercise, other exercise, manipulation) in order to determine whether specific interventions targeting the facet joint are recommended." Dr. Weiss argued that the examination reports failed to establish that Assignor had decreased lumbar extension greater than flexion, which was inconsistent with facet mediated pain.**

**In support of its claim, Applicant submitted the documents contained in the ADR Center including examination reports by Dr. William Gibbs, Dr. Nicole Hidalgo and Dr. Frida Molines and examination report, operative reports and interim reports by Dr. Conrad Cean. I was persuaded by the medical evidence that the lumbar facet and SI injections were warranted. First, Dr. Weiss incorrectly stated that there was no examination performed between November 30, 2017 and February 8, 2018. However, Applicant submitted the examination report by Dr. Molines dated January 31, 2018, which recommended the third set of injections. Furthermore, Dr. Cean's interim reports noted significant improvement following**

the first two set of injections. I was not persuaded by Dr. Weiss' assertion that the improvement should have been greater. Thus, even if Dr. Weiss' peer review was sufficient to support Respondent's defense of lack of medical necessity, I find that Applicant satisfied its burden of rebutting Dr. Weiss' assertions. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11<sup>th</sup> Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11<sup>th</sup> Dist. 2006). Moreover, the treating physician's opinion should be afforded greater weight. *See Oceanside Medical Healthcare, P.C. v. Progressive Ins.*, 2002 N.Y. Slip Op. 50188(U) (Civ. Ct. Kings Co. 2002). Therefore, I find that Respondent improperly denied Applicant's claim and Applicant is entitled to reimbursement for the anesthesia provided on February 8, 2018 in the amount of \$189.07.

Accordingly, Applicant is awarded \$189.07, the entirety of its amended claim.

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
	5 Borough Anesthesia	02/08/18 - 02/08/18	\$695.31	\$189.07	Awarded: \$189.07
Total			\$695.31		Awarded: \$189.07

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/30/2018 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 from April 30, 2018, the date of the request for arbitration, for the Claim awarded above (\$189.07) at a rate of 2% per month, simple, ending with the date of payment of the award.**

C. Attorney's Fees

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

**The insurer shall pay an attorney's fee of 20% of the claim awarded above (\$189.07) plus interest in accordance with 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, Robyn McAllister, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

03/07/2019  
(Dated)

Robyn McAllister

### **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:**  
c2106861aebe306038ea6462fd68a05d

### **Electronically Signed**

Your name: Robyn McAllister  
Signed on: 03/07/2019