

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Multi-Specialty Pain Management PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-17-1081-9935
Applicant's File No. 2059380
Insurer's Claim File No. 0394339860101134
NAIC No. 22063

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 03/08/2019
Declared closed by the arbitrator on 06/03/2019

Stacy Mandel Kaplan, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Jerry Marino from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 595.68**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant reduced the total amount in dispute to \$480.24 pursuant to fee schedule (\$202.80 for physical therapy and \$277.44 for chiropractic treatment).

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

3. Summary of Issues in Dispute

The claimant was the 24 year-old male restrained driver of a motor vehicle that was involved in an accident on 1/9/17. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. Thereafter, the claimant was required to appear at Independent Medical Examinations ("IME") where Frank J. McNally, D.C.

determined further chiropractic treatment was not medically necessary and C. M. Sharma, M.D. determined further neurological treatment was not medically necessary. At issue are physical therapy services and chiropractic services provided by Applicant 9/20/17-10/12/17.

4. Findings, Conclusions, and Basis Therefor

THIS HEARING WAS CONDUCTED USING THE ELECTRONIC CASE FOLDER MAINTAINED BY THE AMERICAN ARBITRATION ASSOCIATION. ALL DOCUMENTS CONTAINED IN THAT FOLDER ARE MADE PART OF THE RECORD OF THIS HEARING.

THE ARBITRATOR SHALL BE THE JUDGE OF THE RELEVANCE AND MATERIALITY OF THE EVIDENCE OFFERED.

Based on a review of the documentary evidence, this claim is decided as follows:

An applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case for reimbursement.

This hearing was held open for Respondent "to upload copies of all relevant IME addendums in this and all linked matters heard on 3/8/19 (this could include the 3/6/19 IME addendum by Rajmani Krishnan, M.D. that was uploaded in AAA Case Nos.: 17-18-1095-6751 and 17-18-1102-8511, the 3/6/19 IME addendum by Frank J. McNally, D.C. that was uploaded in AAA Case No.: 17-18-1102-8511 and the 3/5/19 IME addendum by C.M. Sharma, M.D. that was uploaded in AAA Case No.: 17-18-1102-8511)." After several follow-ups Respondent made the requested post hearing submissions.

The claimant was the 24 year-old male restrained driver of a motor vehicle that was involved in an accident on 1/9/17. The claimant reportedly injured his neck, upper back, and lower back. There was no reported loss of consciousness. There were no reported lacerations or fractures. Following the accident the claimant was transported to New York Presbyterian Hospital where he was evaluated, treated, and released. On 1/11/17 the claimant presented to Melissa DeTullio, D.C. of JTK Chiropractic Care, P.C. and was initiated on chiropractic treatment. On 1/11/17 the claimant presented to East Coast Acupuncture, P.C. was initiated on acupuncture and cupping. On 1/16/17 the claimant presented to David N. Lifschutz, M.D. of Integrated Neurological Associates, PLLC and ultrasound guided trigger point injections to the cervical musculature were performed and the claimant was recommended for physical therapy, continued chiropractic care

and acupuncture, and an antiinflammatory/musculoskeletal relaxer/anesthetic cream (Diclofenac 10%; Cyclobenzaprine 4.0%; Lidocaine 3.0%; Tetracaine 3.0%; Menthol 2.0%). On 2/3/17 the claimant presented to Igor Stiler, M.D. of Healthquest. The claimant presented with complaints of "neck pain: The patient rates the pain in his neck as a 4-5/10 with 10 being the worst possible pain. He describes the pain as being intermittent" and "mid-back pain: The patient rates the pain in his mid-back as a 5/10. He describes the pain as being constant." Dr. Stiler documented "upon examination of the cervicothoracic spine, there was tenderness to palpation of the suboccipital region to T6. Cervical spine range of motion was as follows, flexion 40/50 degrees with mild pain, extension 40/50 degrees, left lateral flexion 40/45 degrees, right lateral flexion 35/45 degrees with mild pain, left rotation 65/80 degrees and right rotation 65/80 degrees. There was a positive compression test...the motor examination revealed 5/5 strength in both the upper and lower extremities with no signs of atrophy or spasticity...dermatomal examination of the skin with the modalities of light touch, pinprick, proprioception, vibration, graphesthesia and two point discrimination revealed no abnormalities...deep tendon reflexes were 2+/4 bilaterally in the upper and lower extremities and the plantar responses were flexor bilaterally...there was no dysmetria to finger to nose and heel to shin. There was no evidence of ataxia nor dysdiadochokinesis." The claimant was initiated on physical therapy. On 3/1/17 Dr. Stiler prescribed a cervical traction unit and a lumbar sacral orthosis. On 4/19/17 the claimant was required to present to C. M. Sharma, M.D. for an independent neurological examination (IME) and Frank J. McNally, D.C. for an independent chiropractic evaluation (IME). These were purportedly negative and Respondent determined "based on the results of a health service examination by Dr(s). SHARMA, LYONS, AND MCNALLY on 04/19/2017, it has been determined that no further Acupuncture, Chiropractic, Massage Therapy, Neurology, Diagnostic Testing, Supplies, and Physical Therapy treatment is necessary for the injuries suffered by [*the claimant*] related to the accident. Accordingly, all Acupuncture, Chiropractic, Massage Therapy, Neurology, Diagnostic Testing, Supplies, and Physical Therapy benefits will be denied effective 12:01 a.m. on 05/03/2017." On 6/22/17 the claimant presented to Brian Haftel, M.D. of Multi-Specialty Pain Management, P.C. (Applicant) and was recommended for physical therapy and chiropractic treatment; consider cervical trigger point injections. On 6/22/17 the claimant presented to Scott C. Gelber, D.C. of Applicant's office and initiated on chiropractic treatment. At issue are physical therapy services and chiropractic services provided by Applicant 9/20/17-10/12/17.

It is noted that Applicant's medical reports and rebuttal identify the claimant was a 52 year-old male. Based on a review of the medical records in evidence and the Applicant's own claimant history (as a restrained driver, as to the date and description of the accident, the injuries sustained, and the date and place of emergency treatment) it is improbable that we are dealing with two different drivers of the same name having identical accidents on the same date. This Arbitrator will proceed as if the claimant was a 24 year-old male restrained driver, as described above. This is supported by the medical reports from New York Presbyterian Hospital, Melissa DeTullio, D.C., David N. Lifschutz, M.D., Igor Stiler, M.D. and the three Independent Medical Examination reports submitted by Respondent. This age inconsistency will be taken as a harmless examination and/or clerical error.

The burden has shifted to the Respondent as they have raised a medical necessity defense. In order to sustain this burden, the Respondent must produce competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. That is, the Independent Medical Examination (IME) report they have relied upon must set forth how and why the disputed services were inconsistent with generally accepted medical and/or professional practices.

An IME report must also set forth a sufficient factual basis and medical rationale for the conclusion that further services are not medically necessary. See *Ying E. Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App Term 2d & 11th Dists. Sept. 3, 2008) (IME report, which indicates that, as of the date of the IME, there was no need for further treatment, is insufficient to demonstrate the lack of medical necessity of services rendered before the IME was conducted). An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mut. Fire Ins Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.).

Respondent timely denied the physical therapy services at issue based on the 4/19/17 independent neurological examination (IME) conducted by C. M. Sharma, M.D. After reviewing the claimant's history, treatment, and medical records, Dr. Sharma conducts what appears to be a thorough examination. Dr. Sharma documented the claimant presented to the IME with complaints of neck and low back pain. Examination revealed muscle contours, the tone of the muscles and the muscle strength were normal in all limbs. The reflexes were symmetrical and no abnormal reflexes were seen. The sensations of touch and vibration were normal. The position sense was present bilaterally. The claimant had a normal gait and was able to walk on heels and toes, and perform tandem maneuver. The claimant was able to transfer to the examination table and the coordination of both hands with rapid alternating movements and finger-nose testing were normal. The arms and legs were inspected and there was no atrophy or deformity. The claimant had a normal posture. Range of motion of the cervical spine was: flexion 50/50°, extension 60/60°, right and left lateral rotation 80/80°, right and left lateral flexion 45/45°. Range of motion of the lumbar spine was: flexion to 60/60°, right and left lateral flexion 25/25° and extension 25/25°. In the supine posture, straight leg raising test was 90° on both sides. Dr. Sharma's diagnosis was cervical and lumbar sprains resolved. Dr. Sharma concluded "There is no need for neurological treatment, diagnostic testing, physical therapy, massage therapy, household help, medical supplies or special transportation."

Respondent timely denied the chiropractic services at issue based on the 4/19/17 independent chiropractic evaluation (IME) conducted by Frank J. McNally, D.C. After reviewing the claimant's history, treatment, and medical records, Dr. McNally conducts what appears to be a thorough examination. Dr. McNally documented the claimant presented to the IME with complaints of neck and low back pain. Examination of the cervical spine revealed range of motion: Flexion to 50/50°; extension to 60/60°; left and right lateral side bending to 45/45°; left and right rotation to 80/80°. Foraminal

Compression test was negative. Shoulder depression test was negative. Cervical distraction test and Soto-Hall sign were negative. Reflexes were symmetrical. Sensations were intact. Examination of the thoracolumbar spine revealed range of motion: Flexion to 60/60°; extension to 25/25°; and right and left lateral side bending to 25/25°. Straight leg raising test was negative bilaterally. Braggard's test was negative. Kemp's test was negative. Reflexes were symmetrical. Fabere Patrick was negative. Sensations were intact. Evaluation of the deep tendon reflexes was unremarkable. Sensory evaluation of the upper extremities and the lower extremities was unremarkable. Motor evaluation of the claimant was normal, as all muscles tested +5/5 bilaterally. Spinal analysis of the claimant in the upright position revealed no antalgic lean, with head, shoulders and hips level. Dr. McNally's diagnosis was resolved cervical and lumbar sprain/strain. Dr. McNally concluded "there is no need for further causally related chiropractic treatment or follow up. There is no need for future diagnostic testing, massage therapy, household help, medical supplies or transportation services, from a chiropractic standpoint."

Where the Defendant insurer presents sufficient evidence to establish a defense based on lack of medical necessity, the burden shifts to the Plaintiff which must then present its own evidence of medical necessity (see Prince on Evidence section 3-104, 3-202). *West Tremont Medical Diagnostic PC v. Geico*, 13 Misc.3d 131, 824 N.Y.S. 2d 759.

During the 6/22/17 initial examination by Brian Haftel, M.D. of Applicant's office the claimant presented with complaints of pain in the neck and pain in the midback. Cervical examination revealed diminished range of motion with flexion to 45/60°, extension to 40/50° and rotation to 65/80°. There was bilateral paracervical and trapezius tenderness and spasms noted. There was tenderness over the lesser and greater occipital nerves. There was midline tenderness at C7. Spurling's test was positive. Thoracic exam revealed bilateral parathoracic tenderness with palpable spasms noted in the intrascapular region. There was midline tenderness. There was no scapular winging noted. The claimant was recommended for physical therapy and chiropractic treatment; consider cervical trigger point injections. Applicant submitted detailed physical therapy progress notes which contain subjective as well as objective findings and support the necessity of post-IME treatment.

During the 6/22/17 initial examination by Scott C. Gelber, D.C. of Applicant's office the claimant presented with complaints of pain in the neck and pain in the midback. Pain was rated 4/10 (on a scale of 1-10). The claimant denied lower back pain and headaches. Cervical examination revealed muscle spasm, tenderness, myofascial pain, and trigger points. Reflex abnormalities were documented (specified). Motor strength abnormalities were documented (specified). Range of motion was restricted in all planes (quantified). Positive orthopedic tests were Cervical Distraction, Maximal Foraminal Encroachment, and Shoulder Depression. Thoracolumbar examination revealed muscle spasm, tenderness, myofascial pain, and trigger points. Reflex abnormalities were documented (specified). Motor strength abnormalities were documented (specified). Range of motion was restricted in all planes (quantified). Positive orthopedic tests were Kemp's test, Nachlas test, and Straight Leg Raise. The claimant was initiated on chiropractic

treatment. Applicant submitted reasonably detailed chiropractic treatment notes which contain subjective as well as objective findings and support the necessity of post-IME treatment.

Applicant submitted a 2/15/19 IME rebuttal in affidavit form by Brian Haftel, M.D. of Applicant's office. Dr. Haftel asserts "Respondent relies on the Independent Medical Examination (IME) report of C.M. Sharma, M.D., performed on April 19, 2017, relating to this patient, to deny reimbursement for the aforementioned services provided by the Applicant. I have had the opportunity to review Dr. Sharma's report, and I disagree with the conclusion stated therein that there was no medical necessity for any future treatment. At the time of the IME the patient complained of pain in his neck and lower back, which caused him difficulty in lying down and sleeping. Despite the patient's complaints at the time of the IME, however, Dr. Sharma stated that the patient's injuries had resolved and that no further treatment was needed." Dr. Haftel opines "I oppose these conclusions. As documented in the medical report attached hereto, the examination findings elicited in my office after the IME clearly indicate that the patient had yet to reach pre-injury status. Please refer to the examination report attached hereto detailing the patient's ongoing injuries after the IME. Unlike the IME doctor, I was responsible for the patient's physical well-being. My main goal was to restore the patient to pre-injury status. At the time of the IME he had yet to reach that level of improvement. This is clearly set forth in the examination report attached hereto."

Respondent submitted a 3/5/19 addendum by C. M. Sharma, M.D. who asserts "I note that I had examined the claimant on 4/19/17. The circumstances of the claimant's accident and the nature of the pains were described in my report...My examination of the claimant on that day showed no signs of neurological injury to any part of the nervous system. I had also noted that he had returned to work as a teacher after three days." Dr. Sharma opines "Dr. Haftel clearly identifies himself as a pain management specialist and not as a neurologist... It is clear that the doctor is discussing pain management issues in this affidavit and not neurological issues." Dr. Sharma continues "in this affidavit, Dr. Haftel has not described his neurological examination of the claimant. He has not pointed out the nature of the neurological injuries that he found the claimant to have sustained from this accident and he has not discussed any disagreements with my examination of the claimant. It should be noted that the presence of neck and back pain is not synonymous with, having neurological injuries. It appears to be that Dr. Haftel has included my examination report along with other independent reports as a matter of procedure and to make sure that he has covered all possible bases. If he were to describe his neurological examination, then we could have a more meaningful discussion." Dr. Sharma concludes "the affidavit also contains some factual errors. I quote the claimant... was "a 51-year-old male"- When I examined the claimant, he told me that he was 24 years old. The claimant's age is further substantiated in the medical records...after review of this affidavit; there is no change in the opinions expressed by me in my report of 04/19/17. Based on my examination, there were no neurological injuries sustained and there was no need for any additional neurological treatment or diagnostic testing, medical supplies, household help or transportation services."

Respondent submitted a 3/6/19 addendum by Frank J. McNally, D.C. who opines "I previously performed my original chiropractic examination on this claimant on 4/19/17. After reviewing additional medical records, my decision remains unchanged as it was originally stated in my chiropractic examination of 4/19/17. At the time of my original examination, the claimant had received over three months of chiropractic treatment at a frequency of three times per week and stated that his condition was somewhat better. The claimant was not taking any pain medication at that time and was back to work fulltime full duty. The claimant had also tested negative in all orthopedic, neurological, and chiropractic evaluations. As originally stated in my original decision, I see no need for further chiropractic treatment at this time."

I am persuaded that the contemporaneous chiropractic and medical records indicate the claimant was benefiting from further treatment. I find Applicant has successfully rebutted the findings and recommendations of Respondent's IME reports and established the need for continued chiropractic and physical therapy treatment beyond the cut-off date.

Accordingly, Applicant is awarded \$480.24.

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

	Multi-Specialty Pain Management PC	09/20/17 - 09/26/17	\$202.80	\$202.80	Awarded: \$202.80
	Multi-Specialty Pain Management PC	09/26/17 - 09/28/17	\$196.44	\$138.72	Awarded: \$138.72
	Multi-Specialty Pain Management PC	10/04/17 - 10/12/17	\$196.44	\$138.72	Awarded: \$138.72
Total			\$595.68		Awarded: \$480.24

B. The insurer shall also compute and pay the applicant interest set forth below. 12/15/2017 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 12/15/17 (the date that arbitration was requested) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of \$1,360."

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

07/03/2019
(Dated)

Charles Blattberg

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
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Electronically Signed

Your name: Charles Blattberg
Signed on: 07/03/2019