

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-18-1091-5513  
Applicant's File No. 2094853  
Insurer's Claim File No. 0537028440101015  
NAIC No. 22055

### ARBITRATION AWARD

I, Patricia Daugherty, 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 08/15/2019  
Declared closed by the arbitrator on 08/15/2019

Marcy Cohen from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Crystal Russo from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 236.94**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant has established its prima facie case and that the denial of claim was issued timely. The parties also stipulated that there are no issues regarding the fee schedule.

3. Summary of Issues in Dispute

Assignor, "OJ," a 33-year-old male driver was injured in a motor vehicle accident on December 18, 2016. At issue herein is the reimbursement of no-fault benefits in the amount of \$236.94 for an initial office evaluation performed on March 8, 2018.

Respondent denied the claim asserting a lack of medical necessity defense pursuant to

the independent medical examination (IME) conducted by Frank Oliveto, M.D. on October 18, 2017. The issue to be determined is whether the service rendered was medically necessary.

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

This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

As the parties stipulated to Applicant's prima facie case and the timeliness of the denial of claim, the burden is on the insurer to prove that the medical treatment performed was not medically necessary. See A.B. Medical Services PLLC v. Geico, 2 Misc.3d 26, 773 N.Y.S.2d 773 (App. Term 2d & 11th Jud Dists 2003).

A defense predicated on an IME must be supported by an IME report that establishes a factual basis and medical rationale for the asserted lack of medical necessity of further health care services. See, Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 NY Slip Op 51863(U), 2008 WL 4222084 (App. Term 2nd & 11th Dists. Sept. 3, 2008); AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 NY Slip Op 50208(U), 22 Misc 3d 133(A) (App Term, 2nd & 11th Dists 2009).

When an insurer presents sufficient evidence establishing a lack of medical necessity, the burden then shifts back to the applicant to present its own evidence of medical necessity. See West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131(A) (App. Term 2d & 11th Jud Dists 2006).

Assignor was involved in a motor vehicle accident on December 18, 2016 where he sustained injuries to his neck and back. He subsequently came under the care of various medical professionals and underwent a conservative course of treatment including physical therapy, chiropractic and acupuncture treatments. MRIs of the cervical and lumbar spines were performed.

On October 18, 2017, Assignor presented to Frank Oliveto, M.D. for an orthopedic IME. The Assignor reported having pain in the low back. Despite these subjective complaints, there were no positive objective findings upon the examination. Dr. Oliveto concluded that the Assignor's injuries were resolved and that no further orthopedic treatment was medically necessary.

Pursuant to Dr. Oliveto's findings, Respondent terminated Assignor's orthopedic treatment benefits, including Applicant's subject claim, effective October 30, 2017.

Applicant argues that Assignor was still suffering from injury at the time of the IME as evidenced by his complaints at the time of the examination. Respondent argues that his complaints were subjective, and all objective tests were performed with negative results.

Respondent argues the negative examination is sufficient to establish its burden of proof of lack of medical necessity and that Applicant has not supplied any contemporaneous medical records to overcome its burden.

After a review of the evidence and hearing the oral arguments of the parties, I find that that Dr. Oliveto's IME report sets forth a sufficient factual basis and medical rationale to establish that services were not medically necessary. As such, Respondent has shifted the burden to Applicant to refute Dr. Oliveto's findings and establish the medical necessity of the services.

I do not find applicant's medical records sufficient to refute the findings of Dr. Oliveto. Applicant has not met its shifted burden of establishing that the services rendered were medically necessary and, as such, its 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 Suffolk

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

08/26/2019  
(Dated)

Patricia Daugherty

### **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:**  
ea5e1a0c8a2f316d67dae609ccb48b89

**Electronically Signed**

Your name: Patricia Daugherty  
Signed on: 08/26/2019