

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.	17-18-1096-9376
Applicant's File No.	2117835
Insurer's Claim File No.	0571393300101019
NAIC No.	22055

ARBITRATION AWARD

I, Keith Tola, 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: EIP

1. Hearing(s) held on 08/05/2019
Declared closed by the arbitrator on 08/05/2019

Koenig Pierre, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Chad Mayer/REP from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 92.98**, 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

This case stems from a New York motor vehicle accident which occurred on January 21, 2017 wherein the EIP, a 43 year old male, allegedly sustained injuries. Applicant seeks compensation for a follow-up office visit on May 7, 2018. Respondent denied for lack of medical necessity, based on the IME of Howard Kiernan, M.D.

4. Findings, Conclusions, and Basis Therefor

This Award was issued upon consideration of the parties' arguments and upon review of the relevant evidence contained within the ADR Center files.

MEDICAL NECESSITY

IME - Dr. Kiernan

The EIP presented to Dr. Kiernan on January 29, 2018. The report confirmed the EIP underwent lumbar spine surgery on May 30, 2017; that Dr. Kiernan reviewed the surgical file on June 29, 2017 and determined the lumbar surgery was appropriate. It also confirmed that at the time of the IME the EIP had been discharged from physical therapy. Examination of the cervical spine revealed no evidence of tenderness or spasms, and cervical range of motion was normal at all planes. Examination of the lumbar spine also revealed no evidence of spasms or tenderness, and lumbar range of motion was normal throughout. Neurological examination of the extremities was unremarkable. Dr. Kiernan indicated all of the EIP's injuries had fully resolved and, consequently, there was no objective clinical findings and, therefore, no need for any additional treatment.

Respondent's Burden

Based on the findings of Dr. Kiernan, respondent satisfied its burden. The presumption of medical necessity is removed and the burden shifts to applicant who must establish medical necessity for post-IME cut-off services, by a fair preponderance of the evidence.

Applicant's Evidence & Determination

As an initial matter, while Dr. Kiernan noted the EIP was discharged from physical therapy at the time of the January 29, 2018 IME, the May 7, 2018 follow-up examination report indicates the EIP continued to complain of pain and was receiving therapy three times per week. In fact, the report indicates: "Patient is to continue physical therapy/HEP, refrain from any activity that exacerbates symptoms such as lifting, carrying ... and follow-up for a repeat evaluation."

On December 8, 2017, the EIP underwent trigger point injections.

The EIP was examined at PromptMedical Spine Care on January 5, 2018. He continued to complain of pain to the lower back. Examination of the lumbar spine revealed tenderness to palpation, as well as spasms. Lumbar range of motion was restricted at all planes. The EIP was diagnosed with status post lumbar trigger point injections with continued complaints of axial pain. Lumbar medial branch blocks were recommended.

The EIP was re-examined on January 31, 2018. His pain was noted to be "much improved," with continued "minimal" lower back pain. Examination findings did reveal evidence of improvement, but also of continued limitations of lumbar range of motion.

The EIP was examined again on February 9, 2018, subsequent to the administration of medial branch blocks. He continued to complain of some pain to the lower back. Examination findings continued to included limitations of lumbar spine ranges of motion, at all planes. Reflexes were noted "abnormal" in the lower extremities.

Though the records reveal evidence of improvement, the continued complaints and positive clinical findings on examinations contemporaneous with the IME of Dr. Kiernan, warrant a finding the EIP had not reached maximum benefit and/or pre-accident status at the time of the IME. I find applicant has proven medical necessity by a fair preponderance of the evidence.

This claim is granted, and applicant is awarded \$92.98.

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.

		Claim		
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Medical		From/To	Amount	Total	Status
	New York Spine Specialists LLP	05/07/18 - 05/07/18	\$92.98	\$ 92.98	Awarded: \$92.98
Total			\$92.98	Awarded: \$92.98	

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/25/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant commenced arbitration by filing on 6/1/18. Applicant filed within 30 days from receipt of denial. As such, respondent shall pay applicant interest computed from the date the claim became overdue, 5/25/18, at the rate of 2% per month, simple, and ending with the date of payment of the award subject to the provisions of 11 NYCRR § 65-3.9(e).

C. Attorney's Fees

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

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR Section 65-4.5(s)(2). The award of attorney fees shall be paid by the insurer. 11 NYCRR Section 65-4.5(e). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the amount of first-party benefits, plus interest thereon, awarded by the arbitrator or the court, subject to a maximum fee of \$850.00" Id. The minimum attorney fee that shall be awarded is \$60.00. 11 NYCRR Section 65-4.5(c). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR Section 65-4.6(i). For claims that fall under the Sixth Amendment to the regulation the following shall apply: "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved disputes, subject to a maximum fee of \$1,360.00."

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

08/29/2019

(Dated)

Keith Tola

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:

31745902f9ed97c7fcd11592ffe01f21

Electronically Signed

Your name: Keith Tola
Signed on: 08/29/2019