

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.	17-18-1095-7613
Applicant's File No.	2112057
Insurer's Claim File No.	0573271060101023
NAIC No.	22055

**ARBITRATION AWARD**

I, Stacey Erdheim, 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: Claimant

1. Hearing(s) held on 09/04/2019  
Declared closed by the arbitrator on 09/04/2019

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

Tara Hardinger from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 185.96**, 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 arbitration arises out of treatment of a Claimant (BA) for injuries sustained in a motor vehicle accident occurring on 2/8/17. Applicant seeks reimbursement for services provided 4/18/18-5/30/18 in the amount of \$185.96. Respondent timely denied the bills based upon an Independent Medical Examination conducted by John Denton MD on 6/21/17.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing.

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. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of a Claimant (BA) for injuries sustained in a motor vehicle accident occurring on 2/8/17. Applicant seeks reimbursement for services provided 4/18/18-5/30/18 in the amount of \$185.96. Respondent timely denied the bills based upon an Independent Medical Examination conducted by John Denton MD on 6/21/17.

The record reveals that claimant was injured in a motor vehicle accident on 2/8/17. She subsequently came under the care of Applicant for treatment. Claimant was seen on 5/1/17 for a follow up examination. Examination of the Cervical spine revealed decreased range of position and a positive Spurling test. Examination of the left shoulder revealed normal range of motion. Examination of the Thoracic spine revealed tenderness. Claimant was advised to continue with treatment. Claimant was seen on 9/27/17. Claimant was seen on 5/1/17 for a follow up examination. Claimant was seen on 9/27/17 for a follow up examination. Examination of the Cervical and Lumbar spine revealed tenderness and restricted range of motion. Claimant was advised to continue treatment.

It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see *Insurance Law* § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Herein, applicant established its prima facie entitlement to first party no-fault benefits.

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452; *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

In the event that an insurer's evidence rebuts the inference of medical necessity, by proof in admissible form, establishing that the services are not medically necessary and if such proof is not refuted by applicant such proof may entitle the insurer to a judgment in its

favor. *Alfa Medical Supplies v. Geico General Ins. Co.*, 36 Misc.3d 156(A), 2012 N.Y. Slip Op. 51765(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2012); *Delta Diagnostic Radiology, PC v. American Transit Insurance Co.*, 18 Misc.3d 128(A), 2007 N.Y. Slip Op. 52455(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007); *A. Khodadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007).

Respondent timely denied the bills in dispute based upon an Independent Medical Examination conducted by John Denton MD on 6/21/17. Dr. Denton found a completely normal examination and diagnosed Claimant with a resolved lumbar sprain/strain, a resolved bilateral shoulder sprain strain, a resolved Cervical spine sprain/.strain and a resolved Thoracic spine sprain/strain. Dr. Denton concluded that there was no need for any further Orthopedic treatment including physical therapy, massage therapy, testing, household help or ambulatory services.

I have reviewed the available record and am persuaded that the Claimant's condition had resolved as of the date of IME performed. Applicant does not have examinations proximate in time with the Independent Medical Examination that would refute the findings that Claimant's condition had resolved. The closest examination in time was performed on 5/1/17 which I find not contemporaneous to the IME to refute the findings of the examination. This examination was 6 weeks prior to the IME. The next follow up examination was on 9/27/17. There is nothing in the record to show what Claimant's condition was between the IME and this examination. I am persuaded by the IME report and the determination that no further treatment was warranted. A defense based upon a lack of medical necessity was established.

Accordingly, in light of the foregoing, based on the arguments of counsel and after thorough review and consideration of all submissions, I find in favor of the Respondent and deny Applicant's 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 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, Stacey Erdheim, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

09/12/2019

(Dated)

Stacey Erdheim

#### **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:**  
885777bbf84baa13953f3b0d6aec6903

### **Electronically Signed**

Your name: Stacey Erdheim  
Signed on: 09/12/2019