American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1086-4939
	Applicant's File No.	2072698
- and -	Insurer's Claim File No.	0143482550101156
	NAIC No.	22063
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Ellen Weisman, 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: Patient

1. Hearing(s) held on 09/27/2019
   Declared closed by the arbitrator on 09/27/2019

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

   Ms. Chelsea Waller, Arbitration Representative from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 92.94**, was NOT AMENDED at the oral hearing.
   Stipulations WERE made by the parties regarding the issues to be determined.

   The parties stipulated that Respondent issued a timely denial and therefore all submissions will be considered.

3. Summary of Issues in Dispute

   This arbitration stems from treatment of a 60 year-old female who sustained injuries as a passenger of a motor vehicle involved in an accident on August 6, 2015. The issue is whether Respondent was justified in terminating this patient's orthopedic benefits on

March 30, 2016, based on the findings reflected in the Independent Medical Examination ("IME") Report of Gregory Chiaramonte, M.D. dated March 22, 2016, resulting in denial of Applicant's bill for a follow-up office visit on January 11, 2018.

4. Findings, Conclusions, and Basis Therefor

The defense premised on the termination of orthopedic benefits on March 30, 2016, is based on the IME Report of Dr. Chiaramonte dated March 22, 2016. As a threshold matter, I find that Applicant has established its primae facie entitlement to reimbursement for a follow-up office visit based on submission of a properly completed claim form setting forth the amount of the loss sustained and establishing that No-Fault payment is overdue. *Ave. T MPC Corp. v. Auto One Ins. Co.*, 32 Misc.3d 128(A) 934 N.Y.S.2d 32 (Table), 2011 N.Y. Slip Op. 41292(U), 2011 WL2712964 (App. Term 2d, 11th & 13th Dists., 7/5/2011); *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 782, 774 N.Y.S.2d 564 (2d Dept., 2004), *Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co.*, 2005-1328 K C., 2006 N.Y. Slip Op. 51047(U), June 2, 2006.

Arguments:

Applicant's counsel argued that despite the fact that the IME physician read the MRI reports, he inaccurately diagnosed sprains and strains. She argued that his failure to address those positive objective test results discredits the IME Report as his diagnoses are inaccurate and lack credibility. Respondent's representative countered that at the time of the IME, the patient did not have symptoms related to those positive MRI findings. She highlighted the fact that the IME Report is entirely negative and that this was the second IME as treatment had been continued following the first IME on January 19, 2016. Thus, she argued that the thorough and credible IME Report suffices to sustain the defense and has not been adequately refuted by contemporaneous medical records.

Findings:

Since Applicant has established a prima facie burden by submission of its bill as noted above, the burden then shifts to Respondent to establish lack of continuing medical necessity for orthopedic treatment and thus for the follow-up office visit at issue which warrants competent, expert proof in admissible form. *Citywide Social Work & Psy. Serv., P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc.3d 608, 777 N.Y.S. 2d 241, 2004 N.Y. Slip Op. 24034 (Civ. Ct., Kings Co., 2004), aff'd., 8 Misc. 3d 1025 (2005). I find that Respondent's IME Report is sufficient to meet its burden of proof of lack of continuing medical necessity and to rebut Applicant's evidence. Dr. Chiaramonte conducted a second IME of this patient on March 22, 2016, which is found to be thorough. At that time, she presented complaining of pain in her neck, mid-back, low

back, right hand, bilateral feet, and thigh. The orthopedic examination was entirely negative as there was no evidence of spasm or tenderness, range of motion was full, and clinical orthopedic tests were negative. The neurological examination revealed full strength, reflexes and sensation. He also examined the patient's right wrist, right hand, bilateral hips, and bilateral ankles/feet, all of which were negative as there was no evidence of heat, swelling, effusion, erythema, crepitus, tenderness or atrophy, and range of motion was full. Dr. Chiaramonte noted that the MRI reports of the cervical and lumbar spine dated September 10, 2015, revealed positive findings including disc pathology. The impressions included resolved cervical, thoracic, lumbar, bilateral wrist/hand, hip, ankle/foot sprains and strains. Therefore, he concluded that no continued orthopedic treatment was medically necessary.

Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for orthopedic care by a preponderance of the credible evidence. *West TremontMedical Diagnostic, P.C. v. GEICO*, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06), *A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company*, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (*See,* Insurance Law Section 5102).

I find further that this burden has not been met. The IME Report is found to be persuasive as to the lack of medical necessity for continued orthopedic care. While the MRI reports are positive, those studies were performed more than six months before the patient's orthopedic benefits were terminated. The insurer is not obligated to continue benefits indefinitely due to positive objective test results where there has been a thorough and credible clinical examination which confirms that her causally related soft tissue injuries had resolved. Moreover, the contemporaneous Progress Notes dated March 2, 2016 and April 6, 2016, are found to be cursory in nature and as such they are insufficient to refute the IME Report. Applicant has not submitted contemporaneous medical records which suffice to refute the IME Report and therefore the defense is sustained.

Accordingly, in light of the foregoing, based on the arguments of the parties' representatives, and after thorough review and consideration of all submissions, I find in favor of Respondent and deny this claim in its entirety with prejudice.

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

10/02/2019
(Dated)

Ellen Weisman

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: Ellen Weisman
Signed on: 10/02/2019