American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists (Applicant)	AAA Case No.	17-18-1101-5917
	Applicant's File No.	2136933
- and -	Insurer's Claim File No.	0069091690101081
	NAIC No.	35882
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Charles Sloane, 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 NR

1. Hearing(s) held on 10/07/2019, 10/09/2019
   Declared closed by the arbitrator on 10/07/2019

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

   Tara Hardinger, Claims 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

   WHETHER THE RESPONDENT CAN RELY UPON AN IME CUT-OFF OF BENEFITS FOR FUTURE MEDICAL BENEFITS BEYOND A SPECIFIC DATE.

   WHETHER THE MEDICAL SERVICES RENDERED HEREIN WERE MEDICALLY NECESSARY.

4. Findings, Conclusions, and Basis Therefor

These are two linked claims, both involving follow up office evaluations after the claimant had received a posterior lumbar discectomy and fusion on August 18, 2014.

The first claim is for the follow up evaluation that was conducted on December 15, 2017.

The second claim is for the follow up evaluation that was conducted on June 11, 2018.

The within accident took place on January 15, 2014.

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing.

There is only one issue herein: 1) whether the respondent can rely upon their IME cut-off to cut off future benefits based the IME exam by Dr. Oliveto which took place on August 26, 2014, and the IME exam which took place on October 21, 2015, cutting off benefits effective September 8, 2014.

This case involves a 47 year old female who was the driver of a motor vehicle involved in a motor vehicle accident on the above date. It appears that she had emergency room treatment following the accident at Nassau University Medical Center, where she was evaluated, x-rays taken and released on the same day. She was seven months pregnant at the time of the accident. She came under the care of the applicant and other providers, mostly by a PMR, Dr. Gregorace, who referred her to this applicant. She had complaints of pain to her neck, middle and lower back. Treatment included physical therapy, massage therapy and acupuncture therapy on a 3x per week basis. She ultimately had a posterior spinal fusion and laminectomy at the L4-5 level on August 18, 2015.

She was doing well and was followed after the surgery by Dr. Lattuga and Dr. Mikelis of the applicant. Post surgery reports are submitted for review.

The respondent denies both follow up examinations that took place on December 15, 2017 and June 11, 2018 based upon IME examinations conducted by Dr. Oliveto on August 26, 2014 and Dr. Manevitz on October 21, 2015.

The first claim is denied based upon both IME examinations.

The second claim is denied solely based upon the IME examination conducted by Dr. Manevitz.

The IME exam of Dr. Oliveto was conducted on August 26, 2014. At the time of this IME, the claimant made complaints of pain to her neck on motion and to the mid and lower back with exertion, bending and lifting. The examination of the thoracolumbar spine noted limitations of motion on flexion 60/90, extension 20/30, bilateral lateral flexion 20/30 and bilateral rotation 20/30, with complaints of discomfort in the paralumbar and parathoracic areas on motion. Despite these findings, he concluded that the thoracolumbar strain syndrome was objectively resolved and healed and that there was no further need for orthopedic treatment.

The IME exam of Dr. Manevitz was conducted more than one year later on October 21, 2015. This was after the surgery which took place two months earlier on August 18, 2015 and after a set of two epidural injections to the spine, which apparently did not help the claimant. At the time of this IME, the claimant continued to make complaints of pain in the neck, upper and lower back, with numbness in the bilateral hands and feet. There were multiple records available for review by Dr. Gregorace, Dr. Katz and Dr. Lattuga, plus the MRI studies, EMG/NCV studies and discectomy report of Dr. Lattuga. Incredibly, the exam of the lumbar spine by Dr. Manevitz found no tenderness, muscle spasm or any restrictions on ranges of motion only two months following a fusion surgery. He opines that the thoraco-lumbosacral sprain is resolved and there is no further medical necessity for any further treatment from a PMR point of view.

He fails in any way to discuss the spinal fusion performed only two months earlier.

The applicant submits both follow up exams for the dates involved. Both note that the claimant has had some improvement post-operatively, but continues to have pain and symptoms consistent with her pre-operative conditions. There was some worsening of the lower back pain, with radiating pain into the bilateral lower extremities, with numbness and tingling despite prior treatments.

The neurological exam noted some sensory deficits in the bilateral L4/L5/S1 dermatomes, with deficits on motor strength at the left HS/tibialis anterior/EHL muscles of 4/5, with reflex deficits of +1 at the bilateral Achilles tendons.

The claimant was recommended to continue with PT and be seen for follow up evaluations.

I am faced with conflicting opinions concerning the medical necessity for the disputed testing and treatment herein. There are no legal issues to resolve. This dispute involves solely an issue of fact, that is, whether or not the continued treatment was medically necessary. Resolution of that fact is determined by which opinion is accepted by the trier of fact. I have carefully studies the reports, documents and opinions for each side.

I find that while the IME of Dr. Oliveto at least found some restrictions on ranges of motion, it is incredible to believe that only two months post fusion surgery that the IME exam of Dr. Manevitz would have no evidence of any positive findings.

Additionally, I find that the contemporaneous exams of the applicant more than aptly explain that the claimant still had residual symptoms and findings post surgery and was in further need of follow up evaluations by her treating orthopedist.

Therefore, I will allow for both of the follow up exams as follows:

$92.98 for the exam of June 11, 2018.

This claim was filed on July 27, 2018. For claims filed with the AAA after February 5, 2015, pursuant to Section 65-4.6 of the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D), payment of the claim shall be limited as follows: 20 (20%) percent of the total amount of the first party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration…, subject to a maximum fee of $1,360.00.

Pursuant to the Court of Appeals decision in *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co*, decided April 2, 2009 cited as 2009 NY Slip Op 02581, interest shall be calculated from the date listed above, regardless of whether the particular denials herein at issue were timely or untimely.

This award is a full determination of all the no-fault benefit claims submitted to this Arbitrator.

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**	**Total**	**Status**
	New York Spine Specialists LLP	**06/11/18 - 06/11/18**	**$92.98**	**$ 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. 07/27/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to the Court of Appeals decision in *LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co*, decided April 2, 2009 cited as 2009 NY Slip Op 02581, interest shall be calculated from the date listed above, regardless of whether the particular denials herein at issue were timely or untimely.

C. Attorney's Fees

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

This claim was filed on July 27, 2018. For claims filed with the AAA after February 5, 2015, pursuant to Section 65-4.6 of the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D), payment of the claim shall be limited as follows: 20 (20%) percent of the total amount of the first party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration…, 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, Charles Sloane, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

10/10/2019
(Dated)

Charles Sloane

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:
a3bb25fc6d7702aa1853772ea3db8431

Electronically Signed

Your name: Charles Sloane
Signed on: 10/10/2019