

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. 17-18-1101-3514
Applicant's File No. 2136883
Insurer's Claim File No. 0399025750101087
NAIC No. 22055

ARBITRATION AWARD

I, Michael Galeno, 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 09/19/2019
Declared closed by the arbitrator on 09/19/2019

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

Joseph Costa, Arb.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

Was the subject office visit medically necessary?

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the parties as contained in the Electronic Case Folder maintained by the American Arbitration Association and the oral arguments

of the parties' representatives. There were no witnesses. I reviewed the relevant documents contained in the ECF for both parties and make my decision in reliance thereon.

On November 21, 2016, the Assignor, a 22-year-old male, was the driver of a motor vehicle which was involved in an accident.

On August 8, 2017, the Assignor underwent lower back surgery performed by the Applicant.

On September 26, 2017, the Assignor underwent an orthopedic evaluation conducted by Dr. Richard Weiss. Dr. Weiss noted, in relevant part: "He came under the care of Dr. Sebastian Lattuga, who performed lower back surgery on 08/08/17. I reviewed the surgical file on 09/08/17, and determined the lumbar spine surgery was appropriate." With regard to the Assignor's "Current Complaints", Dr. Weiss noted: "Pre-operatively, the claimant had lower back pain, with radiating features into the left leg. Post-operatively, he says those symptoms are gone." Lumbar spine examination revealed: "There is a midline longitudinal well-healed incision. No muscle spasms noted. There is some tenderness along the paraspinal musculature. Active range of motion flexion to 60 degrees (normal 60 degrees), extension 25 degrees (normal 25 degrees), right lateral bending 25 degrees (normal 25 degrees), left lateral bending 25 degrees (normal 25 degrees). Passive range of motion is full. Straight leg raise is negative bilaterally. There is no atrophy, deformity or soft tissue swelling noted. Motor strength is 5/5 in all muscle groups tested. Deep tendon reflexes are 2+ and symmetric in the bilateral lower extremities. Heel-toe-walk is normal. All motions are measured with a hand held goniometer." Dr. Weiss stated, in relevant part: "On examination, there are no objective clinical findings that correlate with the reported imaging/diagnostic studies or the claimant's subjective complaints. Therefore, there is no need for treatment, follow-up-up, surgery, diagnostic testing, physical therapy, massage therapy, household help, medical supplies, or transportation services from and orthopedic standpoint. The claimant is able to work."

On October 2, 2017, based on Dr. Weiss's IME report, Respondent issued a general denial for further orthopedic surgery, etc., effective 10/08/2017.

On April 13, 2018, the Assignor had a follow-up visit with the Applicant. The "History of Present Illness" indicated: "Patient is follow-up status post lumbar discectomy at level L4-S1 performed on 08/08/17. Patient with some improvement of lumbar pain, however continues to have some residual pain and symptoms consistent with pre-operative conditions. Patient denies any other trauma, fevers, chills, night sweats, weight gain/loss associated with this." The reported diagnosis was: "Status post lumbar discectomy, L4-S1. **Cervical sprain/strain.**" **The "Diagnostic Imaging" indicated: "MRI C-spine report 01/27/17: no HNP or bulges. Lumbar XRAYs 2 views taken 08/21/17 were satisfactory."**

On June 8, 2018, the Assignor had a follow-up visit with the Applicant. The "History of Present Illness" indicated: "Patient is follow-up status post lumbar discectomy at level L4-S1 performed on 08/08/17. Patient with some improvement of lumbar pain, however

continues to have some residual pain and symptoms consistent with pre-operative conditions. Patient denies any other trauma, fevers, chills, night sweats, weight gain/loss associated with this." The reported diagnosis was: "Status post lumbar discectomy, L4-S1. **Cervical sprain/strain.**" **The "Diagnostic Imaging" indicated: "MRI C-spine report 01/27/17: no HNP or bulges. Lumbar XRAYs 2 views taken 08/21/17 were satisfactory."**

"For an expense to be considered medically necessary, the treatment, procedure, or service ordered by a qualified physician, must be based upon an objectively reasonable belief that it will assist in the patient's diagnosis and treatment, and cannot be reasonably dispensed with. Such treatment, procedure, or service must be warranted by the circumstances as verified by a preponderance of credible and reliable evidence and must be reasonable in light of the subjective and objective evidence of the patient's complaints." Nir v. Progressive Ins. Co., 7 Misc.3d 1006 (A), 801 N.Y.S.2d 237, (Civ.Ct. Kings Co., Nadelson, J., Apr. 7, 2005).

I find, as a matter of fact, the IME report is sufficiently reliable and established, with a preponderance of credible evidence, the subject office services were not medically necessary. The ECF does not contain documentation which persuasively counters, rebuts, and overcomes, the IME report conclusions, with a preponderance of credible evidence.

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

10/20/2019
(Dated)

Michael Galeno

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:
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Electronically Signed

Your name: Michael Galeno
Signed on: 10/20/2019