

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. 17-18-1085-6014
Applicant's File No. 2065678
Insurer's Claim File No. 0286451030101059
NAIC No. 22055

ARBITRATION AWARD

I, Alina Shafranov, 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 10/02/2019
Declared closed by the arbitrator on 10/02/2019

Helen Mann Ruzhy, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Heather Pliszak 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 NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The Assignor, "LA", a 43-year-old female was involved in a motor vehicle accident as a passenger on November 10, 2016. The Assignor sought medical treatment for her injuries sustained in the motor vehicle accident and eventually came under the care of New York Spine Specialists. Applicant seeks reimbursement for an office visit for date of service 12/20/17. Respondent timely denied the claim based upon the Independent Medical Examination (IME) by Howard Kiernan, M.D. performed on 10/23/17. As Applicant's claim properly reflects the New York State Workers' Compensation Medical Fee Schedule, the only issue to be decided is whether the continuing treatment was medically necessary after the IME cut-off date.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment. Kingsborough Jewish Med. Ctr. v. All State Ins. Co., 61 A.D. 3d. 13 (2d. Dep't, 2009). See also Channel Chiropractic PC v. Country Wide Ins. Co., 38 AD 3d. 294 (1st Dep't, 2007). An insurance carrier must at a minimum establish a detailed factual basis and a sufficient medical rationale for asserting lack of medical necessity. See Delta Diagnostic Radiology PC v. Progressive Casualty Ins. Co., 21 Misc. 3d. (142A) (App. Term 2d. Dep't, 2008).

In support of its contention that further orthopedic treatment was not medically necessary Respondent relies upon the IME of Howard Kiernan, M.D. performed on 10/23/17. The physical examination revealed no objective positive findings. All ranges of motion were within normal limits and all orthopedic and neurological testing was negative. Dr. Kiernan diagnosed the Assignor's injuries as resolved. Dr. Kiernan opined that based on the physical examination no further treatment was medically necessary.

I find that the examination report presents a factually sufficient cogent medical rationale in support of Respondent's lack of medical necessity defense. Dr. Kiernan did not identify any objective positive findings and determined the injuries were resolved. Based upon the foregoing, Respondent has met the burden of production. Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical 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 & 11 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 & 11 Dists. 7/3/08).

To rebut the IME of Dr. Kiernan, Applicant relies on numerous medical records. I am convinced that the IME Report of Dr. Kiernan has been adequately refuted by the evidence collectively. The clinical examinations by Dr. Demetrios Mikelis revealed decreased ranges of motion, and positive neurological testing. The medical reports note numerous positive objective findings and are contemporaneous to and post-date the

IME. The Assignor continued to report subjective complaints, and the objective exam findings confirmed that continued treatment was warranted beyond the cutoff of benefits

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant.

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	12/20/17 - 12/20/17	\$92.94	\$ 92.94	Awarded: \$92.94
Total			\$92.94	Awarded: \$92.94	

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/08/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

This case was filed less than 30 days from the date of the denial, thus, interest will run pursuant to regulation 65 - 3.9(c) which states the following: "If an applicant does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Department of Financial Services regulations, interest shall not accumulate on the disputed claim or element of claim until such action is taken." Since the arbitration was requested within 30 days of the denial, interest runs from when the claim became overdue, which is 30 days after receipt of the bill. As such, the interest award date shall be February 8, 2018.

C. Attorney's Fees

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

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

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

10/28/2019
(Dated)

Alina Shafranov

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:
1007442d93ca35c535d455f48c9e2a25

Electronically Signed

Your name: Alina Shafranov
Signed on: 10/28/2019