

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.	17-18-1102-7557
Applicant's File No.	2136836
Insurer's Claim File No.	0585384230101017
NAIC No.	35882

ARBITRATION AWARD

I, Laura Yantsos, 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 11/05/2019
Declared closed by the arbitrator on 11/05/2019

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

Mark Graziano, Esq., 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

Applicant sustained a back and neck injury in the motor vehicle accident. Applicant was seen by the Respondent's doctor approximately 4 months post accident and evaluated at an Independent Medical Evaluation (IME). The Respondent's doctor does not acknowledge in his IME report that the assignor sustained a neck injury at the time of the accident. When asked about his present complaints, through a translator, the assignor told the Respondent's doctor that he has pain in his back. The Respondent's doctor did not examine the assignor's neck, only assignor's lower back. Treating records from 2018 state that the assignor has had "on-going" pain in both his back and neck since the accident. All treating records submitted by both parties show complaints about both the back and neck.

Can the Respondent's denial based upon this IME be sustained?

4. Findings, Conclusions, and Basis Therefor

The claim is for office evaluation on 6/12/18. The total amount of the claim is in the sum of \$92.98.

The Respondent denied the claim on the recommendations of its doctor, Pierre Ferriter, M.D. who examined the assignor on 8/24/17 and found that he was in no further need of care. Benefits were terminated effective 9/7/17.

The 43 year old male assignor was involved in a motor vehicle accident on 4/13/17 while a passenger in a vehicle that was struck in the rear by another motor vehicle. After the accident, he later presented himself to an emergency room of a hospital where he was evaluated and discharged. He subsequently came under the care of his private doctors complaining of back and neck pain. On evaluation, the doctor noted findings of spasm, restriction in range of motion, signs of tenderness, and motor weakness in the upper and lower extremities. Trigger point was noted in the upper left extremity. He received physical therapy, and later trigger point injections. Treatment continued and on August 24, 2017, assignor was seen by the Respondent's doctor.

It is apparent that the Respondent reviewed very few records. The Respondent doctor is not wholly accurate in recording the assignor's clinical history because the assignor did have injections in addition to therapy. Further, the records reflect that the assignor sustained both a back and neck injury in the accident, and all the treating records submitted show on going complaints about his neck. However, the Respondent doctor did not examine the assignor's neck, only his back. Respondent's doctor did not even acknowledge that the assignor sustained a neck injury in the accident.

It is acknowledged that the assignor allegedly had present complaints only about his lower back, according to the Respondent's doctor, but the treating doctor's evaluation report which is the subject of this action shows that the assignor had "ongoing" neck and back pain since the accident. All the records submitted by both parties show complaints about both the back and neck. It is further noted that the assignor spoke through a translator at the time of the Respondent's Independent Medical Evaluation. I find that there is nothing to oppose the assignor's continuing need for care of his neck, except for the translation of assignor's statement about his "present complaints" at the time of the Respondent's Independent Medical Evaluation. Without normal exam findings, I do not find this statement to be sufficiently reliable to overcome the showing made in the records.

Applicant is awarded \$92.98 with interest from the date of filing, plus attorney's fees and filing fee as herein below set forth.

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	Status
	New York Spine Specialists LLP	06/12/18 - 06/12/18	\$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. 04/10/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall pay interest on the total award in the sum of two percent, per month, simple interest, calculated from the date the Applicant filed his application with the AAA on the date above noted, and ending on the date when payment is made. 11 NYCRR 65-3.9

C. Attorney's Fees

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

The Respondent shall also pay the applicant attorney's fees on the total award in accordance with 11 NYCRR 65-3.10 and subject to the limitations of 11 NYCRR 65-4.6.

- 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 Suffolk

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

11/30/2019

(Dated)

Laura Yantsos

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:
0fbf7ebc8a0a51deffc8db635501aac4

Electronically Signed

Your name: Laura Yantsos
Signed on: 11/30/2019