

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Easy Access Chiropractic, PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-19-1121-2175

Applicant's File No. EAC-0013

Insurer's Claim File No. 027087322-0101-011

NAIC No. 22055

**ARBITRATION AWARD**

I, Joseph Endzweig, 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

1. Hearing(s) held on 04/07/2020  
Declared closed by the arbitrator on 04/07/2020

Gil Schapira, Esq. from The Law Office of Gill S. Schapira, P.C participated by telephone for the Applicant

Nicole Jeffares from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,137.67**, 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

This arbitration arises out of treatment of a 41 year old male for injuries sustained in a motor vehicle accident which occurred on 7/15/18. Applicant seeks reimbursement for an initial consultation provided on 9/11/18, billed at \$54.73 and EMG/NCV testing of the upper and lower extremities performed on 9/11/18, billed at \$2,082.94. Respondent denied reimbursement for the EMG/NCV testing based on the peer review report of Dr. Ron Amidror.

#### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the hearing.

This arbitration arises out of treatment of a 41 year old male for injuries sustained in a motor vehicle accident which occurred on 7/15/18. Applicant seeks reimbursement for an initial consultation provided on 9/11/18, billed at \$54.73 and EMG/NCV testing of the upper and lower extremities performed on 9/11/18, billed at \$2,082.94. Respondent denied reimbursement for the EMG/NCV testing based on the peer review report of Dr. Ron Amidror.

According to the records submitted by the parties, the claimant was a restrained driver of a motor vehicle involved in an accident. There was no evidence of loss of consciousness. After the accident, he did not seek emergency care. On 8/2/18 he presented to chiropractor Ross Fialkov with complaints of neck pain, mid back pain, low back pain, and bilateral shoulder pain. Impression was sprain of the cervical spine, thoracic spine, and lumbar spine. According to the medical file, the claimant underwent prior low back surgery in 2017. On 09/11/2018, the claimant was examined by Dr. Faisal Masood, D.C., with complaints of intermittent headache, memory problem, constant neck pain and stiffness which radiates to bilateral hand, constant low back pain and stiffness which radiates to bilateral foot with numbness and tingling sensation in lower extremities. Physical examination of the cervical spine revealed active and passive range of motion moderately restricted in flexion and bilateral lateral bending. There was moderate painful muscle spasm of the paravertebral musculature in the cervical area bilaterally. Palpation of the neck revealed tenderness at the level C4-C7. There was trigger point multiple at C5-7 levels. Range of motion revealed flexion 30 degrees (50 degrees normal) with pain, extension 30 degrees (60 degrees normal) with pain, bilateral lateral bending 20 degrees (45 degrees normal) with pain and bilateral rotation 50 degrees (80 degrees normal) with pain. Distraction test, maximum cervical compression test, Jackson compression test, and shoulder depression test were positive. Examination of the lumbar spine revealed active and passive range of motion moderately restricted in all motions. Palpation of spinous processes revealed tenderness over L1-S1 levels. Palpation of paraspinal musculature revealed moderate tenderness and muscle spasm over L4-L5-S1 levels. There were trigger points at L5-S1 levels. Range of motion revealed flexion 30 degrees (60 degrees normal) with pain, extension 15 degrees (25 degrees normal) with pain and bilateral lateral bending 10 degrees (25 degrees normal) with pain. Straight leg raise test was 50 degrees bilaterally. Braggard's test was absent. Bechterew's test, Toe walking test and Heel walking test were negative. Yeoman's test was positive bilaterally. Hibb's test was negative in sacroiliac lesion test. Patrick's test was negative. Ely Heel to buttock test was positive. Kemp's test was positive bilaterally in intervertebral disc syndrome. Neurological examination of the motor strength was 4/5 bilaterally. Reflexes were 2+ bilaterally. Sensory examination was normal except C6-C8 and L4-S1 levels bilaterally. Clinical impression was of cervical sprain and strain syndrome, cervicalgia, cervical radiculopathy, lumbar sprain and strain syndrome, low back pain, lumbar radiculopathy, spasm of muscle, and muscle weakness. Diagnostic plan consisted of recommendation for EMG/NCV studies of upper and lower extremities

and to continue physical therapy and chiropractic treatment. EMG/NCV studies of the upper and lower extremities were performed on 09/11/2018 by Faisal Masood, D.C.

Respondent submits a peer review report from Dr. Ron Amidror. Dr. Amidror concludes that the EMG/NCV testing of the upper and lower extremities was not medically necessary. He notes that in this case the chiropractor did not follow guidelines nor show medical necessity. He notes that as a result of the accident the claimant presented with soft tissue (sprain/strain) injuries mainly to the cervical, thoracic, and lumbar spine. He states that it was appropriate for the chiropractor to start a six to eight week course of conservative chiropractic care (which includes: manipulation, soft tissue treatment with physiomodalities). He states that EMG/NCS may be indicated if there is a differential diagnosis between a root and distal neuropathic/myopathic lesion. Otherwise, for outpatient EMG/NCS testing, there is limited evidence to support the use of often uncomfortable and costly EMG/NCS in STRS. He notes that according to the Guideline Summary NGC-10124 Guideline Title Neck and upper back (acute & chronic). Work Loss Data Institute.2013 May 14, EMG is not necessary for the diagnosis of intervertebral disk disease with radiculopathy. He notes that in the Spine Journal 14 (2014) 180-191 in an article titled: An evidence-based clinical guideline for the diagnosis and treatment of lumbar disc herniation with radiculopathy: When the diagnosis of lumbar disc herniation with radiculopathy is suspected, it is the work group's opinion that cross-sectional imaging be considered the diagnostic test of choice and electrodiagnostic studies should only be used to confirm the presence of comorbid conditions. He maintains that the patient's treatment did not depend on the result of this study nor, would the result of this study change the overall treatment plan for this patient; to the contrary, and as evident from the given record this patient's primary treatment is conservative care, such as physical therapy and chiropractic. He states that diagnostic testing should be used only when the result could lead to/ and or alter the patient's overall treatment protocol; not in order to reconfirm an existing diagnosis; hence, if the study is not clinically useful, then this study should not be considered medically necessary. He notes that after knowing the result of the study the treatment plan did not change; and the patient continued to receive conservative care. He notes that in a review which was published in Neurol Clin Pract titled: EMG/NCV in the evaluation of spine trauma with radicular symptoms, October 2013 vol. 3 no. 5 366-367, the author concluded that EMG/NCS is indicated and appropriate when there is a differential diagnosis of a root vs a distal neuropathic lesion that cannot be resolved by history, physical examination, and imaging.

Applicant submits a rebuttal from Dr. Masood Faisal. Dr. Faisal asserts that he recommended the EMG/NCV testing since the claimant's examination demonstrated ongoing symptoms and a developed differential diagnosis. He states that based on the outcome of his examination of 9/11/2018, he recommended the EMG/NCV testing of the upper and lower extremities to confirm the diagnosis of radiculopathy and rule out peripheral neuropathy. He states that those recommendations, which included other treatment options, were intended for Dr. Rahman (the referring doctor), as he was seeing the claimant on a more regular basis and was monitoring his present and future conservative treatment protocol. He notes that the claimant had ongoing complaints approximately 5 weeks as documented in the medical records that he reviewed when the claimant was referred to him. He notes that according to the New York Medical

Guidelines December 1st 2010 C.2a.iii "waiting 4 to 5 weeks is sufficient time for the development of EMG/NCV abnormalities as well as time for conservative treatment to resolve the problems". He maintains that with the presence of unresolved pain and discomfort for approximately 5 weeks of treatment the EMG/NCV test was performed, within the New York Worker's Compensation Medical Guidelines. Dr. Faisal states that in this case, there was a valid question of differential diagnosis and the question could not be resolved on the grounds of neurological examination alone. Specifically, there was differential diagnosis based on muscle weakness that was noted in shoulder abduction deltoids (C5- Axillary nerve) (4/5) on the bilateral sides, elbow flexion biceps (C5,C6 - Musculocutaneous nerve) (4/5) on the bilateral sides, elbow extension triceps (C6,C7,C8 - radial nerve) (4/5) on the bilateral sides, wrist extension (C6,C7,C8 - radial nerve) (4/5) on the bilateral sides, wrist flexion (C6,C7 - median and ulnar nerves) (4/5) on the bilateral sides and hand grip/finger flexion (C7, C8, T1- median and ulnar nerves) (4/5) on the bilateral sides of the upper extremities along with hip flexion Iliopsoas (L2, L3, L4-femoral nerves) (4/5) on the bilateral sides, hip extension (L4, L5, S1 - Gluteal nerve) (4/5) on the left side, knee extension quadriceps (L2, L3,L4-femoral nerve) (4/5) on the bilateral sides, knee flexion hamstrings (L5,S1 ,S2 - sciatic nerve) (4/5) on the right side and ankle/ foot plantar flexion gastrocnemius, soleus (S1, S2-tibial nerve) (4/5) on the right side of the lower extremities; and impaired sensation - decreased response to light touch and pin prick sensation in C6-C7-C8 nerve roots on the bilateral sides of upper extremities with pain and hyperesthesia along with L4-L5-S 1 nerve roots on the bilateral sides of the lower extremities with pain and hyperesthesia. He states that based on the above-mentioned neurological deficits that have overlapping symptoms of radiculopathy and neuropathy, EMG/NCV of the upper and lower extremities were ordered to determine localization and extent of peripheral nerve or nerve root damage to rule out cervical & lumbar radiculopathy. He states that with respect to the clinical diagnosis of radiculopathy, the clinical information in this particular case was insufficient to objectively prove or disprove the diagnosis of radiculopathy, determine its location and assess its severity, include or exclude other serious coexisting morbidities that might have been present in this patient. He states that all of these are simply impossible to achieve clinically since all the below conditions including radiculopathies and potential neuropathies present with very similar signs and symptoms, and the human mind is not equipped to diagnose those conditions. He maintains that clinical diagnosis of radiculopathy is an essential prerequisite in the treatment of any patient, and an EMG test can actually prove it. He notes that the EMG/NCV study was abnormal. There was electrophysiologic evidence consistent with right C5-C6 and bilateral C6-C7-C8 radiculopathy. There was evidence of a bilateral median nerve compression across the wrist involving the sensory fibers consistent with Carpal Tunnel Syndrome. He notes that after the test results were reviewed, certain recommendations were made and were attached to the relevant test results. Dr. Faisal concludes that the disputed EMG/NCV testing was medically necessary.

Respondent submits an addendum from Dr. Amidror. After reviewing all of the assertions made by Dr. Faisal in his rebuttal, as well as the cited literature, Dr. Amidror does not change his opinion that the disputed EMG/NCV testing was not medically necessary.

It is Applicant's prima facie burden to establish its entitlement to payment for the subject services.

It is well settled that a health care provider establishes its prima facie entitlement to payment as a matter of law by proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see *Insurance Law § 5106 a*; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452; *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

Since Applicant submitted a timely and proper claim the burden is on the respondent to prove that the disputed services were not medically necessary.

In the event an insurer relies on a peer review report to demonstrate that a particular service was medically unnecessary the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory or may be supported by evidence of generally accepted medical/professional practice or standards. See *Nir v. Allstate Insurance Company*, 2005 NY Slip Op 25090; 7 Misc.3d 544; 796 N.Y.S.2d 857; 2005 N.Y.Misc. LEXIS 419 and *Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc. 3d 608; 777 N.Y.S.2d 241; 2004 NY Slip Op 24034.

When an insurer interposes a timely denial of claim that sets forth a sufficiently detailed factual basis and adequate medical rationale for a claim's rejection, the presumption of medical necessity attached to the applicant's properly completed claim is rebutted and the burden shifts back to the claimant to refute the peer review and prove the necessity of the disputed services. *Id.* See, e.g., *CPT Med. Servs., P.C. v. New York Cent. Mut. Fire Ins. Co.*, 2007 NY Slip Op 27526, 18 Misc.3d 87 (App. Term 1st Dept.); *Eden Med., P.C. v. Progressive Cas. Ins. Co.*, 2008 NY Slip Op 51098(U), 19 Misc.3d 143(A) (App Term 2d & 11th Jud Dists., 2008); *Bath Med. Supply, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 2008 NY Slip Op 50347(U) (App. Term 2d Dept., Feb. 26, 2008) (since the provider failed to rebut the peer review's showing of a lack of medical necessity, defendant was entitled to dismissal of complaint). Where Respondent has set forth a medical rationale and factual basis in support of its contention that the treatment was not medically necessary, the burden then shifts to Applicant, who bears the ultimate burden of persuasion.

Upon consideration of the arguments of counsel and after a thorough review of all submissions I find that Respondent has submitted sufficient evidence to meet its burden of demonstrating that the disputed testing was not medically necessary so as to require the applicant to come forward with additional evidence in support of the need for the service. Respondent sets forth a factual basis and a medical rationale for denying the claim. I find that Applicant has submitted sufficient evidence, through the rebuttal of Dr. Faisal, to satisfy its burden of refuting the findings of the peer review and demonstrating the medical necessity of the disputed service. Dr. Faisal sufficiently addresses the issues raised by the peer and adequately explains the necessity for the testing. I find the Applicant's proof in this case to be more persuasive than Respondent's proof.

Accordingly, I find in favor of the Applicant and award the sum of \$2,137.67.

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              |
|---------|------------------------------|---------------------|--------------|---------------------|
|         | Easy Access Chiropractic, PC | 09/11/18 - 09/11/18 | \$54.73      | Awarded: \$54.73    |
|         | Easy Access Chiropractic, PC | 09/11/18 - 09/11/18 | \$2,082.94   | Awarded: \$2,082.94 |
|         |                              |                     |              |                     |

|              |                   |                                |
|--------------|-------------------|--------------------------------|
| <b>Total</b> | <b>\$2,137.67</b> | <b>Awarded:<br/>\$2,137.67</b> |
|--------------|-------------------|--------------------------------|

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/26/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall run from the date the request for arbitration was received by the AAA.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 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, Joseph Endzweig, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

04/07/2020  
(Dated)

Joseph Endzweig

### **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:**  
d7676fee9bca332df53679fa0084755b

### **Electronically Signed**

Your name: Joseph Endzweig  
Signed on: 04/07/2020