

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Endo Surgical Center of North Jersey
(Applicant)

- and -

Country-Wide Insurance Company
(Respondent)

AAA Case No. 17-18-1102-9212

Applicant's File No. GS-510328

Insurer's Claim File No. 000314714 003

NAIC No. 10839

ARBITRATION AWARD

I, Michael Achtziger, 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: EIP

1. Hearing(s) held on 07/09/2020
Declared closed by the arbitrator on 07/09/2020

Helen Cohen, Esq. from Law Offices Of Gabriel & Shapiro, LLC. participated by telephone for the Applicant

David Slaney, Esq. from Country-Wide Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,851.14**, 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
Were facility fees for a post IME benefits termination cervical epidural steroid injection on 07/23/16 (\$1,402.70) and a cervical facet joint block injection on 10/07/16 (\$3,448.44) medically necessary for this 33-year old female after an accident of 04/02/16?
4. Findings, Conclusions, and Basis Therefor

Respondent timely denied this billing based upon the 07/12/16 IME report of Joseph Margulies, MD who diagnosed resolved cervical and lumbar sprains after a comprehensive examination in which both orthopedic and neurological functions in both the upper and lower extremities were described as being within normal limits.

Viewing Applicant's evidence, a Rebuttal has not been submitted. Procedure Reports of Allan Weissman, MD are submitted which do not contain examination findings to rebut or refute those of Joseph Margulies, MD.

In a prior related case involving the physician's bills for several injections performed from 08/12/16 to 09/23/16, (17-17-1059-4016), Arbitrator Elyse Balzer, Esq. upheld the 07/12/16 IME report of Dr. Margulies and found as non-persuasive both the Rebuttal and contemporaneous 07/25/16 report of dr. Weissman, noting that the patient was actually examined on 07/25/16 by a physician's assistant whose examination was insufficient to rebut or refute the IME.

After review of all evidence, while collateral estoppel does not strictly apply, nevertheless I agree with Arbitrator Balzer that Dr. Margulies has rebutted prima facie medical necessity. I further find that Applicant's Procedure Reports fail to rebut or refute that opinion.

Accordingly, reimbursement is denied.

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

07/23/2020
(Dated)

Michael Achtziger

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:
706d739f5a4c56021281d61d34d4c49a

Electronically Signed

Your name: Michael Achtziger
Signed on: 07/23/2020