

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ponce Acupuncture PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-19-1142-5611
Applicant's File No.	234128
Insurer's Claim File No.	0576280200101022
NAIC No.	22063

ARBITRATION AWARD

I, Valerie D. Greaves, 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: Patient

1. Hearing(s) held on 08/05/2020
Declared closed by the arbitrator on 08/05/2020

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Maria Greenman, Claims Representative from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,984.90**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel withdrew with prejudice the portion of the claim seeking reimbursement for bills #1-4 (in the order listed in the AR-1) due to Respondent's previous reimbursement in accordance with the applicable reimbursement rates.

The amended amount is now \$1720.66.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

Whether Applicant is entitled to reimbursement in the sum of \$1720.66 for follow-up acupuncture examinations, acupuncture needle insertions and infrared therapy performed 10/22/2018 through 6/12/2019, allegedly in connection with the treatment of injuries sustained by Patient in a motor vehicle accident on 6/8/2018.

Respondent timely denied reimbursement based on findings revealed during chiropractic and acupuncture insurer medical examinations (IME) of Patient conducted by Milton P. Groelinger, DC, and John C. Yang, L.Ac., respectively dated 1/4/2019; chiropractic and acupuncture No-Fault benefits were cut off effective 1/19/2019.

Applicant's submission includes an IME rebuttal titled "letter of medical necessity" by Maittes Romero, L.Ac., dated 2/26/2020.

4. Findings, Conclusions, and Basis Therefor

The decision below is based on the documents contained in the ADR Center as of the date of the hearing and the oral arguments of the parties. No witnesses testified at the hearing.

Applicant is seeking reimbursement for follow-up acupuncture examinations, acupuncture needle insertions and infrared therapy performed 10/22/2018 through 6/12/2019, allegedly in connection with the treatment of injuries sustained by Patient in a motor vehicle accident on 6/8/2018. Reportedly, Patient, a male then 58 years old, was operating a motor vehicle when the accident occurred; he did not strike his head, sustained no loss of consciousness, no fractures and received no immediate post accident medical care. Two days post accident, Patient went to Mercy Hospital for evaluation; he was treated and released the same day. Patient subsequently began a course of conservative treatment involving physical therapy, acupuncture and chiropractic care. Patient underwent two lumbar epidural steroid injections, following both injections, he obtained one to two weeks of relief before the pain returned. It is noted that physical therapy treatment was initiated on 6/3/2018.

Bills #1-4

Withdrawn with prejudice.

Bills #5-11

Respondent timely denied reimbursement based on findings revealed during chiropractic and acupuncture insurer medical examinations (IME) of Patient conducted by Milton P. Groelinger, DC, and John C. Yang, L.Ac., respectively dated 1/4/2019; chiropractic and acupuncture No-Fault benefits were cut off effective 1/19/2019. A persuasive insurer medical examination must demonstrate clinical findings which support its contention that a particular good or service was not medically warranted. The most relevant IME report to assess the necessity of the disputed services is the acupuncture IME report.

Patient presented for the acupuncture IME on 1/4/2019 complaining of pain in his neck, back and left shoulder when sleeping and walking. Examination of the cervical spine revealed mild to moderately restricted range of motion, mild muscle spasm and moderate tenderness to palpation, muscle strength was noted at 5/5 and the Soto Hall test was negative. Examination of the thoracic spine revealed no muscle spasm or tenderness to palpation. Examination of the lumbar spine revealed mild to moderately restricted range of motion, mild muscle spasm and moderate tenderness to palpation, muscle strength was noted at 5/5 and the Kemp's test was positive. Examination of the left shoulder revealed restricted range of motion, no heat, no swelling, no effusion, no erythema and no crepitus was appreciated; the impingement sign was negative. The traditional Chinese Medicine examination revealed normal vitality, normal facial skin, normal voice, normal tongue, rapid pulse, Qi and blood stagnation in the UB and DU channels has been resolved for mid back, and unresolved Qi and blood stagnation in the UB, DU, SI, LI and GB channels for the neck, low back and left shoulder. The diagnostic impression was:

1. Cervical spine - Qi and blood stasis stagnation-resolving UB and DU meridians.
2. Thoracic spine - Qi and blood stasis stagnation-resolved UB and DU meridians.
3. Lumbar spine - Qi and blood stasis stagnation-resolving UB and DU meridians.
4. Left shoulder - Qi and blood stasis stagnation-resolving SI, LI and GB meridians.

The acupuncture IME consultant advised that although Patient had exhibited signs and symptoms of Qi and blood flow stagnation, there was

no need for further treatment because Patient had reached a treatment plateau from an acupuncture point of view.

Applicant's submission includes an IME rebuttal titled "*letter of medical necessity*" by Maittes Romero, L.Ac., dated 2/26/2020. A review of the rebuttal reveals follow-up acupuncture examination findings demonstrating that Patient's pre and post IME acupuncture treatment sessions were slowly continuing to improve his symptoms.

Based on the foregoing, Applicant is entitled to No-Fault benefits.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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	Amount Amended	Status
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	Ponce Acupunctu re PC	10/22/18 - 10/31/18	\$88.08		Withdrawn with prejudice
	Ponce Acupunctu re PC	11/01/18 - 11/16/18	\$44.04		Withdrawn with prejudice
	Ponce Acupunctu re PC	11/19/18 - 11/28/18	\$44.04		Withdrawn with prejudice
	Ponce Acupunctu re PC	12/03/18 - 12/13/18	\$88.08		Withdrawn with prejudice
	Ponce Acupunctu re PC	04/01/19 - 04/30/19	\$603.88	\$603.88	Awarded: \$603.88
	Ponce Acupunctu re PC	04/04/19 - 04/04/19	\$26.41	\$26.41	Awarded: \$26.41
	Ponce Acupunctu re PC	05/01/19 - 05/17/19	\$515.80	\$515.80	Awarded: \$515.80
	Ponce Acupunctu re PC	05/07/19 - 05/07/19	\$26.41	\$26.41	Awarded: \$26.41
	Ponce Acupunctu re PC	05/20/19 - 05/30/19	\$257.90	\$257.90	Awarded: \$257.90
	Ponce Acupunctu re PC	06/03/19 - 06/12/19	\$263.85	\$263.85	Awarded: \$263.85
	Ponce Acupunctu re PC	06/07/19 - 06/07/19	\$26.41	\$26.41	Awarded: \$26.41
Total			\$1,984.90		Awarded: \$1,720.66

- B. The insurer shall also compute and pay the applicant interest set forth below. 09/20/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from 9/20/2019, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

C. Attorney's Fees

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

The Respondent shall pay the Applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). However, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 New York

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

09/04/2020
(Dated)

Valerie D. Greaves

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:
af96a83841cfdcf97f6f063897082520

Electronically Signed

Your name: Valerie D. Greaves
Signed on: 09/04/2020