

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Old Bridge Spine & Wellness Center  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-19-1122-8431
Applicant's File No.	N/A
Insurer's Claim File No.	0427014570101028
NAIC No.	22063

### ARBITRATION AWARD

I, Jeffrey Held, 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: Eligible Injured Person "EIP"

1. Hearing(s) held on 01/31/2020, 10/01/2020  
Declared closed by the arbitrator on 11/05/2020

Brandon Fleishhacker, Esq. from Judd Shaw Injury Law P.A. participated by telephone for the Applicant

Crystal Abreu, Esq. from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 9,459.02**, 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

Whether Applicant, as assignee of the EIP, a 30-year old male with a history of a November 27, 2016 motor vehicle accident with causally related injuries that include, inter alia, a cervical strain and sprain, has established entitlement to reimbursement of a claim for health service benefits that includes, inter alia, physical therapy covering dates of service ranging from May 3, 2017 through March 31, 2018, as fully depicted on Part 3 of the AR-1. At issue is whether this forum has jurisdiction over this matter insofar as Respondent asserts that the proper venue is a New Jersey forum.

Assuming *arguendo* jurisdiction is sustained, the remaining issue is fee schedule. Respondent asserts that the balance, after payments and fee schedule adjustments, should be reduced to \$905.71.

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

Pursuant to 11 NYCRR 65-4.5 (o)(1), an arbitrator shall be the judge of the relevance and materiality of the evidence offered. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

This award is rendered based upon the documents that appear in the ADR center, as well as the arguments and concessions made at the time of the hearing. There were no witnesses at the hearing.

Succinctly stated, Applicant, as assignee of the EIP, a 30-year old male with a history of a November 27, 2016 motor vehicle accident with causally related injuries that include, inter alia, a cervical strain and sprain, seeks payment/reimbursement of health service benefits, as fully depicted on the 12 bills delineated on Part 3 of the AR-1.

Respondent, over the objection of the Applicant, argues that the claim should be dismissed, albeit without prejudice, on the ground that this forum does not have jurisdiction to hear this matter as the proper venue is a New Jersey. Each side has submitted briefs, with supporting authorities, applying, in substance and in part, a "center of gravity" and/or "grouping of contacts" analysis, albeit with disparate conclusions.

Inter alia, Respondent, an October 9, 2020 post-hearing submission argues, in part:

*"...the policy was contracted in New Jersey with a New Jersey choice of law provision, the policyholder was a resident of New Jersey and the vehicle principally garaged in New Jersey. In addition, all the treatment that took place in the instant*

*matter occurred in New Jersey. The only minimal connection to New York that the matter has, is the location of the accident."*

Respondent relies, in part, on a November 30, 2016, Application for benefits (C-258 NJ) covering the claim at issue in which the EIP lists a New Jersey Residence; Insurance Declaration Page covering the period October 13, 2016 through April 13, 2017, depicting, in part, the corresponding New Jersey address for the EIP depicted on the application for no fault benefits; and a New Jersey Family Automobile Insurance Policy with a Choice of Law Provision that provides, "(t)he policy and any amendment(s) and endorsement(s) to be interpreted pursuant to the laws of the State of New Jersey." (Page 28, paragraph 18 thereof).

Applicant argues, in substance and in part, that Respondent's proof is insufficient to establish that the policy is "New Jersey Specific"; asserts that there is jurisdiction to hear this claim, inter alia, in 11 NYCRR 65-4.2(3); argues, in substance, that New York has "the most significant relationship to the transactions and parties" insofar as the accident occurred in New York, the EIP is a resident of New York and Respondent is a foreign corporation business and therefore subject to the jurisdiction of New York. Further, Applicant argues that conflicts issues should be decided based, in part, on application of the "Neumeier rules," as analyzed, in part, in *Bodea v. Trans Nat. Express, Inc.*, 286 AD 2d 5 (4<sup>th</sup> Dept., 2011), one of the authorities relied upon by Applicant. (See, Applicant's February 25, 2020 brief.)

Applicant relies, in part, on a police report and the EIP's driver's license (Exhibits "A" and "D" to its post-hearing brief.)

For emphasis, both sides submitted legal authorities in support their respective positions. (Respondent also submitted arbitral authority.)

Based upon the evidence adduced in this claim, as well as any argument and/or concession made at the time of the hearing or in post-hearing submissions, I find that I am persuaded by Respondent's hearing position and hold that the claim should be dismissed without prejudice.

In so holding, I find that I am persuaded by Respondent's analysis, as set forth in its October 9, 2020 post-hearing submission, which includes its reliance, in part, on arbitration awards, to wit: *Wei Dao Acupuncture*,

*PC/AA and Geico Insurance Company* (AAA case number 17-1-1110-0459, Arbitrator Sheehan), *Paterson Surgical Services PC/AA and Geico Insurance Company* (AAA case number 17-18-1103-8625, Arbitrator Sohi), *Northern Physical Therapy Chiropractic & Acupuncture, PLLC/AA/AA and Geico Insurance Company* (Arbitrator Russo, AAA no. 17-18-1103-9736) and *Surgicore of Jersey City, LLC/AA and Geico Insurance Company*, (AAA case number 17-19-1141-9288, Arbitrator Marotta).

As Arbitrator Marotta wrote in *Surgicore of Jersey City, LLC/AA and Geico Insurance Company*, supra:

*"The initial issue for determination is whether the incident arbitration should be dismissed without prejudice to refile in New Jersey. The record reveals the policy in question was issued in the State of New Jersey to the EIP who resides in Teaneck, New Jersey. The vehicle location is also listed as Teaneck, New Jersey. The LESIs were performed by a New Jersey doctor. at the Applicants facility in New Jersey. The only connection with New York is the location of the accident. Given New Jersey's connection with the claim, New Jersey law would apply. Careplus Medical Supply, Inc. v. Selective Ins. Co. of America, 25 Misc, 3d 48890 N.Y.S.2d 258 (App. Term 9<sup>th</sup> and 10<sup>th</sup> Jud. Dists. 2009). In New Jersey disputes involving personal injury protection claims for personal injury protection must file a claim with the State of New Jersey's No-Fault arbitration program administrator, Forthright See NJAC 11: 3-5.51, et. seqAfter (sic) a review of the documents contained in the ECF and in consideration of the arguments made by the parties at the hearing, I agree with Respondent's argument that the matter must be dismissed without prejudice to refile in the proper venue. Therefore, the incident arbitration should be dismissed without prejudice to be refiled in New Jersey Forthright System. No other issue should be decided."*

In reviewing the evidence at bar, I reach the same determination as to the necessity to dismiss the case, albeit without prejudice, particularly where the only "the only connection with New York is the location of the accident."

Implicit in my holding is my rejection of the Applicant's argument that the EIP is a New York resident, as set forth in its February 25, 2020

brief and supported by a New York Driver's license. (Exhibit "D" to Applicant's brief.) A review of the license reveals that same was issued August 30, 2013. (This arbitrator takes judicial notice of the fact that New York issued license are generally valid for 8 years.) In the judgment of this arbitrator, however, the New Jersey address depicted for the EIP, inter alia, on the policy declaration page, as well as the application for no-fault benefits, the latter with signature, issued/dated subsequent to the date of the EIP's driver's license, and closer in time to the date of the accident, is found to be the more probative evidence of the EIP's address at all relevant times herein. (See also, the bills, which depict the same New Jersey address for the EIP that also corresponds to the address on the declaration page and application for no-fault benefits.)

Further, I find that Respondent's evidence, in its totality, is sufficient in the within arbitration proceeding to overcome Applicant's argument that that Respondent "...does not provide any evidence that the policy held here is a New Jersey policy" or that "...a specific jurisdiction was selected during contracting the agreement." (See, page 6 and 7 Applicant's February 25, 2020 brief.) To that end, I find that the declaration page, when read in conjunction with the "New Jersey Family Insurance Policy" is sufficient to overcome the Applicant's argument and, in the absence of credible rebuttal evidence, carry the weight of the evidence for the Respondent on the within hearing record.

The remaining evidentiary predicate(s) relied upon by the Respondent, inter alia, the location where the treatment was rendered, is found to be either undisputed or otherwise substantiated by a preponderance of the credible evidence.

Claim denied without prejudice. Any further issue raised in the hearing record, including as to fee schedule, is held to be moot. The parties are commended for their zealous representation.

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 DISMISSED without prejudice

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 (NY)

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

11/30/2020  
(Dated)

Jeffrey Held

### **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:**  
01d2e6b2ed4bb6952f7bab5ad6a9a443

**Electronically Signed**

Your name: Jeffrey Held  
Signed on: 11/30/2020