American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Louis H Vastola (Applicant)	AAA Case No.	17-19-1117-5274
	Applicant's File No.	DK18-51510
- and -	Insurer's Claim File No.	0627032970101024
	NAIC No.	
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Ellen Cutler-Igoe, 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 11/05/2020
   Declared closed by the arbitrator on 11/05/2020

   Henry Guindi, Esq. from Korsunskiy Legal Group P.C. participated by telephone for the Applicant

   Justin Addison, Hearing Specialist from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,330.56**, 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 seeks payment of charges for upper and lower pf-NCS testing performed for Assignor, a 25 year old passenger, on August 23, 2018 following a motor vehicle accident occurring on August 3, 2018. Respondent timely denied payment of Applicant's charges predicated upon findings of its consultant, Dr. Ayman Hadhoud's, peer review reports dated October 26, 2018 and October 27, 2018.

4. Findings, Conclusions, and Basis Therefor

This hearing was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. No witnesses testified at this hearing. Any documents contained in the electronic file are hereby incorporated into this hearing. I have reviewed all relevant exhibits for both parties and make my decision in reliance thereon. All other arguments are considered waived if not presented at such hearing.

Pursuant to 11 NYCRR 65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. 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 claim arises out of injuries, Assignor, a 25-year-old male passenger, sustained in a motor vehicle accident occurring on August 3, 2018. On August 15, 2018, Assignor presented to Applicant with complaints of neck pain radiating to the right upper extremity, mid and lower back pain, bilateral wrist pain and bilateral shoulder pain exacerbated by flexion, bending, walking, standing and lying down. Cervical spine, thoracic spine and lumbar spine examinations revealed tenderness and restricted range of motion and positive bilateral Spurling and Impingement, Straight Leg Raising testing, decreased muscle strength in the upper extremity and decreased sensation in the right C5, C6 and bilateral L4, L5 and S1. Assignor was recommended to participate a in physical therapy program and referred for MRIs of the cervical spine, thoracic spine, lumbar spine, right shoulder, right wrist, X-ray of the left shoulder, Range of Motion Testing, Muscle Testing and Functional Capacity Testing. On the same day of the aforesaid evaluation, Applicant performed upper and lower pf-NCS testing; Respondent denied payment predicated upon findings of its consultant, Dr. Ayman Hadhoud's, peer review reports dated October 26, 2018 and October 27, 2018.

A no-fault provider establishes its prima facie case by proof of the submission to the insurer of a claim form, proof of the fact and amount of the loss sustained, and proof either that the insurer had failed to pay or deny the claim within the requisite 30-day period, or that the insurer had issued a timely denial of claim that was conclusory, vague or without merit as a matter of law. *Ave T MPC Corp. v. Auto One Ins. Co.*, 32 Misc 3d 128 [A], 2011 NY Slip Op 51292[U], *1 (App Term, 2d, 11th & 13th Jud Dists 2011).

In the case at bar, Applicant met its initial burden of proof; thus, the burden is on the insurer to establish that the herein services were medically unnecessary. *Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co.*, 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dept.2005); *A.B. Medical Services, PLLC v. GEICO*, 2 Misc 3d 26, 773 N.Y.S.2d 773(App Term 2nd & 11th Jud Dist 2003) 1025A, 806 N.Y.S.2d 444 (App. Term 1st Dept. 2005).

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. *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, 2d and 11th Jud Dists 2003).

As noted, Respondent timely denied Applicant's charges for the upper and lower pf-NCS testing performed on August 23, 2018 predicated upon findings of its consultant, Dr. Ayman Hadhoud's, peer review reports dated October 26, 2018 and October 27, 2018. Dr. Hadhoud reviewed a litany of Assignor's medical treatment history as provided to him by Respondent to proffer the following: "The standard of care regarding performing any quantitative tests of sensation such as current perception threshold (CPT), pain perception threshold (PPT), or pain tolerance threshold (PTT) testing or voltage input type device used for voltage-nerve conduction threshold (v-NCT) or pain fiber nerve conduction study (pf-NCS) is to establish a diagnosis of chronic condition that involved the peripheral nerves such as cases of peripheral sensory neuropathy. Quantitative testing of the peripheral nerves could be performed for research purposes in order to make a study regarding the extent of the involvement of peripheral nerves. Obviously, this is not the case here in this patient's presentation." Dr. Hadhoud discredited the results of the pf-NCS as merely subjective data with unreliable results based on a patient's subjective perception of stimuli presented at several variables from one person to another. Dr. Hadhoud summarized that Applicant performed the studies on numerous nerves that were totally irrelevant to Assignor's clinical presentation. Applicant relied on its medical evaluation and tests results as refutation evidence.

After consideration of the totality of the credible evidence submitted and oral arguments, I find Dr. Hadhoud's bases for denying payment unrebutted. Specific to the facts as presented, Dr. Hadhoud cited to the American Academy of Neurology and American Association of Electrodiagnostic Medicine to conclude that testing, such as the pf-NCS, requires further validation. Moreover, the record is void of any indication as to why the upper and lower pf-NCS testing were performed for Assignor on the date in issue. Although the medical records demonstrate Assignor's continuity of participation in a treatment protocol, the treatment notes fail to establish that results of the pf-NCS were medically necessary to formulate a treatment protocol or for any other medically necessary purpose. Performance of the testing did not aid in Assignor's recovery from injuries sustained in the herein motor vehicle accident.

Accordingly, for the foregoing reasons, Applicant is claim 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, Ellen Cutler-Igoe, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

12/01/2020
(Dated)

Ellen Cutler-Igoe

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:
55e9b3bb4b794983336a90065dc1d685

Electronically Signed

Your name: Ellen Cutler-Igoe
Signed on: 12/01/2020