

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Bergen Pain Anesthesia  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-20-1158-1356
Applicant's File No.	n/a
Insurer's Claim File No.	0280603300101096
NAIC No.	35882

### 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 11/10/2020  
Declared closed by the arbitrator on 11/10/2020

Brandon Fleischhacker from Judd Shaw Injury Law P.A. participated by telephone for the Applicant

Mark Graziano from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, \$ 2,600.00, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's counsel amended the claim in accordance with the applicable New York State fee schedule rates of reimbursement; Applicant now seeks \$162.06 for the date of service 7/19/2019 and \$189.07 for the date of service 11/15/2019, totaling \$351.13.

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 \$351.13 for anesthesia services associated with cervical/thoracic spine epidural steroid injections performed 7/19/2019 through 11/15/2019, allegedly in connection with injuries sustained by Patient in a motor vehicle accident on 12/1/2018.

Respondent timely denied reimbursement based on the applicable fee schedule and the peer review analysis reports of Mitchell Ehrlich, MD, dated 8/16/2019 and 12/12/2019.

#### 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.

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 [11 NYCRR 65-4.5 (o) (1) (Regulation 68-D)].

The Appellate Division, Second Department held that applicant "made a prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms had been mailed and received and that payment of no-fault benefits were overdue." (Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004)). A facially valid claim is presented when it sets forth the name of the facility and/or health provider, date of the accident, the name of the patient, description of the services rendered, date of service(s) and the fees charged for those services. See, 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 Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term 2nd & 11th Jud Dist 2003). Applicant has established a prima facie case of entitlement to reimbursement by submission of completed proof of claim, documenting the fact of the loss and the amount due.

Applicant is seeking reimbursement for anesthesia services associated with cervical/thoracic spine epidural steroid injections performed 7/19/2019 through 11/15/2019, allegedly in connection with injuries sustained by Patient in a motor vehicle accident on 12/1/2018. Reportedly, Patient, a female then 35 years old, was a restrained driver when the accident occurred; she received no immediate post-accident medical care. The day after the accident she presented to CityMed Bayside where she was evaluated and received treatment. Six days post accident on 12/7/2018, Patient presented to Northwell Health/Long Island Jewish Hospital, where a CT scan of the cervical spine was performed and found negative for acute fracture or malalignment; she was treated and released the same day. She subsequently underwent a course of conservative care involving physical therapy, massage therapy and acupuncture treatment.

Applicant maintains that the disputed injections were medically necessary due to the inability of conservative care to effectively resolve Patient's complaints of neck and back pain.

Predating the date of accident is the MRI Report of the Cervical Spine dated 8/27/2018; the diagnostic impression was: 1. Mild broad-based shallow left-sided C4-5 disc herniation with mild left-sided thecal sac flattening. 2. Small right paracentral C5-6 disc herniation with mild thecal sac flattening. 3. Small central C6-7 disc herniation mild thecal sac deformity. 4. No spinal cord compression or spinal stenosis.

CT Scan Report of the Cervical Spine dated 12/7/2018 revealed: No evidence of acute fracture or malalignment.

MRI report of Cervical Spine, dated 1/20/2019 diagnosed: 1. Interval development of nonspecific straightening normal cervical lordosis 2. Mild broad-based shallow left-sided C4-5 disc herniation without significant change. 3. Mild broad-based central C5-6 disc herniation, changed in morphology from prior small right paracentral disc herniation, without compressive change. 4. Small central C6-7 disc herniation with mild thecal sac deformity findings are without significant change [from the pre-accident MRI Report of the Cervical Spine dated 8/27/2018].5. New, small shallow right-sided C7-T1 disc herniation. 6. No spinal stenosis. 7. Otherwise no significant interval change.

Respondent carries the initial burden of proof, after Respondent has timely raised and established lack of medical necessity, the burden of proof then shifts to the Applicant to establish that the disputed services were medically

necessary. If the insurer medical examination or peer review is not rebutted, the insurer is entitled to denial of the claim. Khodadadi Radiology v. New York Central, 16 Misc.3d 131(A), 841 N.Y.S.2d 824, (App. Term 2d & 11th Dists. (2007)); Dayan v. Allstate Ins. Co., 49 Misc. 3d 151 (A), 29 N.Y.S. 3d 846, 2015 NY Slip Op 51751 (U) (App. Term 2d, 11<sup>th</sup> & 13<sup>th</sup> Dists. 2015). "...Once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, 'plaintiff must rebut it or succumb'." Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 806 N.Y.S.2d 443 (Table), 2005 N.Y. Slip Op. 51282(U), 2005 WL 1936346 (Civ. Ct. Kings Co., (2005). Where a peer review or insurer medical examination findings provide a factual basis and medical rationale for the opinion that a particular service is not medically necessary and Applicant fails to present any evidence to refute that showing, the claim should be denied. Delta Diagnostic Radiology, P.C. v. Progressive Cas. Ins. Co., 21 Misc.3d 142(A), 880 N.Y.S.2d 223 (Table), 2008 N.Y. Slip Op. 52450(U), 2008 WL 5146967 (App. Term 2d & 11th Dists. (2008).

Respondent timely denied reimbursement based on the applicable fee schedule and the peer review analysis reports of Mitchell Ehrlich, MD, dated 8/16/2019 and 12/12/2019. A persuasive peer review report must contain a cogent credible basis for the opinion that Applicant deviated from medical community standards for the service under review or that the service was not necessary under the circumstances and/or establish that the service performed was not causally related to the motor vehicle accident.

Respondent's peer reviewer, Dr. Ehrlich noted that Patient underwent the initial cervical/thoracic epidural injection on 2/22/2019, underwent a second cervical/thoracic epidural steroid injection on 7/19/2019, and underwent a third cervical/thoracic epidural injection on 11/15/2019. Dr. Ehrlich further noted that when Patient presented to Dr. Gupta on 2/22/2019, she complained of neck and back pain; the examination revealed decreased cervical spine range of motion, tenderness to palpation, decreased sensation in the left arm, normal deep tendon reflexes and normal muscle strength. The treatment plan involved a cervical/thoracic epidural injection performed on 2/22/2019 and continuing physical therapy. Patient was reevaluated by Dr. Gupta on 05/07/2019, the reevaluation report indicates that Patient's neck pain had returned. Dr. Ehrlich advised that since neither the 2/22/2019 report nor the 5/7/2019 report indicates that Patient's pain level or the duration of any pain reduction, and the record indicates that Patient continued to experience pain following the 2/22/2019

cervical/thoracic epidural injection, there was no medical necessity to perform another cervical/thoracic epidural injection on 7/19/2019. Dr. Ehrlich further advised that *"because there were no new post-traumatic neurologic deficits associated with the injury dated 12/01/18. The imaging study of the cervical spine did not reveal any new and significant post-traumatic lateralizing disc pathology correlating with the complaints. Without those key indicators, there was no medically related reason for an epidural injection in regard to the accident of 12/01/2018 [and]...the prior [2/22/2019] cervical/thoracic epidural was not documented [as a] success"*. Regarding the 7/19/2019 date of service, Applicant's rebuttal does not explain or rebut the earlier failure of the 2/22/2019 cervical/thoracic epidural injection or present a medical rationale for repeating it on 7/19/2019 in the absence of documentation that the earlier cervical/thoracic epidural injection was successful at reducing pain.

Regarding the cervical/thoracic spine epidural steroid injection performed on 11/15/2019, Dr. Ehrlich again advised that *there were no new post-traumatic neurologic deficits associated with the injury dated 12/01/18. The imaging study of the cervical spine did not reveal any new and significant post-traumatic lateralizing disc pathology correlating with the complaints. Without those key indicators, there was no medically related reason for an epidural injection in regard to the accident of 12/01/2018 [and]...the prior cervical/thoracic epidural injection was not documented [as a] success"*. Dr. Ehrlich again maintained that there was no reevaluation report documenting pain level improvement and the duration of that improvement to demonstrate that the procedure had previously provided pain reduction for Patient.

Regarding both disputed dates of service, Dr. Ehrlich advised that the disputed cervical/thoracic spine epidural injections and the associated services were performed contrary to the New York State Workers' Compensation Neck Injury; additionally, in the absence of documentation that earlier cervical/thoracic injections were a success in terms of sustained pain relief, improved function and reduction in frequency of treatment, there was no medical rationale for repeat cervical/thoracic epidural injections.

Applicant's rebuttal relies primarily on a positive Spurling's test and fails to credibly rebut the peer reviewer's contentions that the record contains no actual documentation that the injections were successful. Although Applicant maintains that after the first cervical spine epidural steroid

injection performed on 6/15/2018, Patient's symptoms had improved; the record does not contain any report documenting that improvement in the form of noting Patient's pain level and function improvement after the first cervical/thoracic spine epidural steroid injection, without which the necessity for the second cervical/thoracic spine epidural steroid injection cannot be supported, and likewise the necessity for the third cervical/thoracic spine epidural steroid injection cannot be supported.

I find that Respondent has established lack of medical necessity by a preponderance of the credible evidence; Applicant's documentation is insufficient to credibly rebut lack of medical necessity.

### DECISION

Applicant is not 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 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 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.

12/10/2020  
(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:**  
ed88e6d1fc1d5300c0a20c541c083c2d

**Electronically Signed**

Your name: Valerie D. Greaves  
Signed on: 12/10/2020