

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New Horizon Surgical Center LLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-20-1158-7013
Applicant's File No.	BT20-109783
Insurer's Claim File No.	0449299010101092
NAIC No.	22055

ARBITRATION AWARD

I, Carolynn Terrell-Nieves, 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: Claimant

1. Hearing(s) held on 01/27/2021
Declared closed by the arbitrator on 01/27/2021

Boris Tadchiev, Esq., from The Tadchiev Law Firm, P.C. participated by telephone for the Applicant

Alberto De Chavez, Esq., from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 3,213.98**, 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

In dispute is Applicant New Horizon Surgical Center, LLC claim as the assignee of a 41-year-old man injured as the driver of a motor vehicle involved in an accident on May 4th 2018, for payment of ambulatory surgical facility fees incurred as a result of a lumbar medial branch nerve block under fluoroscopy and associated services. Respondent timely denied the claim relying on a peer review by its board-certified physiatrist Dr. Cyrus Kao.

4. Findings, Conclusions, and Basis Therefor

The case was decided after consideration of the arguments of the parties and after a thorough review of the submissions of the parties and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein. Respondent denied reimbursement for the instant procedure based upon a peer review performed at its request.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, 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. It is well-established that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. See: *Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v General Assurance Co.*, 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2d Dept., June 2, 2006; See: Insurance Law §5106 a, *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742, 774 N.Y.S.2d 564 (2004); *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2d & 11th Jud Dists.)]. See also: 11 NYCRR §65-1.1, *Vista Surgical Supplies, Inc. v. Metropolitan Property and Casualty Ins. Co.*, 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006.

The claimant was seen by Dr. Ashraf Sakr. The claimant reported neck pain and lower back pain. The claimant had chiropractic care. She had x-rays of lumbar and thoracic spine on 5/4/19. He was prescribed medications.

The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See, *Nir v. Allstate Ins. Co.*, 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); see also, *All Boro Psychological Servs. P.C. v. GEICO*, 2012 N.Y. Slip Op. 50137(U) (Civ. Ct. Kings Co. 2012). In order to prevail, respondent's peer review must address all of the pertinent objective findings contained in applicant's medical evidence.

It must then clearly explain why, notwithstanding those findings, the disputed service was inconsistent with generally accepted medical or professional practices. *Amaze Medical Supply Inc. v. Eagle Insurance Co.*, supra, 2 Misc.3d 128(A); *Citywide Social Work, et al, v. Travelers Indemnity Company*, 3 Misc.3d 608, 777 N.Y.S.2d 241 (Civ. Ct. Kings Co. 2004). Where other reports in the insurer's papers contradict the conclusion of its peer review, or that the service was not medically necessary, it has failed to make out a prima facie case in support of the defense of lack of medical necessity. *Hillcrest Radiology Associates v. State Farm Mutual Automobile Insurance Company*, 28 Misc.3d 138(A), 200 N.Y. Slip Op. 51467(U) 2010 WL 3258144 (App

Term 2 , 11 and 13 Dists. 2010). Respondent relies upon a peer review report by Cyrus Kao M.D. dated November 08, 2019 in support of its denial predicated upon a lack of medical necessity.

Dr. Kao considered various records in conjunction with his peer review. Upon completion of his review of the records, Dr. Kao concluded that there was no indication for the lumbar medial branch nerve block under fluoroscopy and associated services. According to Dr. Kao medial branch block injections or intra-articular facet joint injections are recommended for patients with pain suspected to be largely facet in origin based on exam findings of facet disease.

In support of its claim, Applicant relies upon the medical records contained in evidence in the record below. Applicant also offers a report by Ashrak Sakr M.D. prepared specifically in rebuttal to the peer review.

Comparing the relevant evidence presented by both parties as against each other, and upon consideration of the oral arguments presented by counsel, I find that Applicant has sufficiently and successfully rebutted Dr. Kao's opinion that the performance of the disputed lumbar medial branch block was not medically necessary. I find the Rebuttal to be persuasive, as it responded to the peer review with sufficient medical rationale, addressed in detail the points raised by the peer review, and demonstrated that the administration of the medial branch block was within generally accepted medical standards, which is sufficient to meet its burden. (See High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145[A] [App. Term 2010].) Overall, Dr. Cohen fails to form a nexus between the injuries sustained by the Claimant in this particular instance, and his contention that the injection was not indicated.

An expert must provide an explanation as to why the particular examination findings of the particular patient under review did not clearly support accepted use of the disputed service. The expert in this instance failed to provide the "why". Thus, Dr. Kao's report fails to comport with the standards enumerated in *Nir v. Allstate Ins. Co.*, 7 Misc.3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005), and, as such, Respondent's defense predicated upon a lack of medical necessity cannot be sustained.

To Respondent's detriment, Dr. Kao's report fails to satisfy that burden. Applicant and Respondent submitted CPC affidavits. Following a thorough review of both Applicant's and Respondent's Affidavit's, I find the Applicant is hereby awarded the amount of \$1,423.89 pursuant to CPC Carolyn Mallory.

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	Status
	New Horizon Surgical Center LLC	08/24/19 - 08/24/19	\$3,213.98	Awarded: \$1,423.89
Total			\$3,213.98	Awarded: \$1,423.89

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/04/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be paid accordingly.

C. Attorney's Fees

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

Attorney fees are paid accordingly.

- 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 Nassau

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

02/20/2021

(Dated)

Carolynn Terrell-Nieves

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:
6e24028ecabd228acb6161e786cc3f82

Electronically Signed

Your name: Carolynn Terrell-Nieves
Signed on: 02/20/2021