

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Center for Neurorestorative Medicine
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-19-1133-5774
Applicant's File No. n/a
Insurer's Claim File No. 0341841810101076
NAIC No. 35882

ARBITRATION AWARD

I, Richard Martino, 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/patient.

1. Hearing(s) held on 04/21/2021
Declared closed by the arbitrator on 04/21/2021

Lee-Ann Trupia Esq. from The Law Offices of Hillary Blumenthal P.C. (Melville) participated for the Applicant

David Trompeter Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 762.60**, 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 reimbursement of charges for an outcome assessment test and an occipital nerve block injection performed on January 29, 2019 following a January 27, 2019 automobile accident.

The respondent issued a timely denial of the applicant's claim based upon the peer review of its medical consultant Jason Cohen M.D. , dated March 26, 2019.

The Assignor, a 30-year-old female, was involved in an automobile accident that occurred on January 27, 2019.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the Electronic Case Folder as of the date of the hearing.

This case involves a claim for an outcome assessment test and an occipital nerve block injection performed on January 29, 2019 following a January 27, 2019 automobile accident.

The medical evidence is as follows:

The Assignor, a 30-year-old female, was involved in an automobile accident that occurred on January 27, 2019.

She thereafter came under the care of Jordan Fersel M.D. on January 29, 2019 due to complaints of a headache, cervical pain, thoracic pain, lumbar spine pain and shoulder pain. The location of headache was frontal.

Her headaches lasted 4 to 6 hours.

Dr. Fersel performed an outcome assessment test and administered an occipital nerve block injection on this date.

The respondent issued a timely denial of the claims at issue based upon the peer review of Jason Cohen M.D.

Dr. Cohen never examined the subject patient.

He offers a number of opinions to dispute the medical necessity of the injection.

He initially opines that the patient did not exhibit any clinical evidence of occipital nerve blocks.

He also states that the patient did not have any occipital nerve pathology and did not need the injection to treat her injury. He also states that there is no comprehensive examination performed or documented by Dr. Fersel establishing evidence for the medical necessity of additional outside outcome assessment testing.

According to the rebuttal of Dr. Fersel, the patient did have pain in the occipital region of her head. He also describes why he performed the outcome assessment testing.

I now turn to the medical necessity of the services rendered to the applicant:

I begin with the occipital nerve block injection :

It is well settled that an applicant for no-fault benefits establishes its prima facie entitlement to payment by proving that it submitted a claim, set forth the fact and the amount of the loss sustained, and proof that the defendant had failed to pay or deny the claim within the requisite 30 day period, or that the defendant had issued a timely denial of the claim that was conclusory, vague, or without merit as a matter of law (see Insurance Law §5106[a]; Ave T MPC Corp v. Auto One Insurance Co., 32 Misc .3d 128 (A), 934 N.Y.S.2d 32; 2011 N.Y. Slip Op 51292 [U], 2011 WL 2712964 (App Term 2d & 11th and 13th Jud Dists. July 5, 2011). A "facially valid claim," is presented where it sets forth the name of the patient; date of accident; date of services; description of services rendered and the charges for those services. See, Vinings Spinal Diagnostic P.C. v. Liberty Mutual Insurance Company, 186 Misc.2d 287; 717 NYS2d 466 (1st Dist. Ct. Nass.

In this case the respondent has not met its burden of proving that the nerve block injection was not medically necessary for the patient for the following reasons:

Dr. Cohen states the patient did not have occipital headaches however the medical evidence and reports of Dr. Fersel clearly refute this opinion.

Furthermore, Dr. Fersel explains why the injection was needed to treat the subject patient. (see rebuttal above).

I therefore defer to the treating physician's opinion with regard to the medical necessity of the injection at issue.

Based upon the evidence submitted and reviewed, I find the nerve block injection administered by the Applicant was medically necessary pursuant to 11NYCRR 65.1(d).

I next address the claim for the outcome assessment test:

Respondent asserts that applicant was not entitled to bill for the outcome assessment test.

I agree.

Ground Rule 2 contained in the Surgical portion of the Fee Schedule states: Immediate Preoperative Visits and Other Services by the Surgeon Under most circumstances, including ordinary referrals, the immediate preoperative visit in the hospital or elsewhere necessary to examine the patient, complete the hospital records and initiate the treatment program is included in the listed value for the surgical procedure. Additional charges may be warranted for preoperative services under the following circumstances: A) When the preoperative visit is the initial

visit (e.g., an emergency) and prolonged detention or evaluation is required to prepare the patient or to establish the need for and type of surgical procedure. B) When the preoperative visit is an initial consultation, as defined in the Evaluation and Management section. C) When procedures not usually part of the basic surgical procedure (e.g., myelography prior to laminectomy, bronchoscopy prior to chest surgery) are provided during the immediate preoperative period." Here the codes used by the Applicant 99204 and 99358 to bill for the follow up examination and the outcome assessment testing are both contained in the Evaluation and Management section of the Fee Schedule and are not considered an initial examination.

Based upon the fact that the Applicant provided a surgical procedure, a nerve block injection, on the same day that the patient had the follow up examination and the outcome assessment testing, which is defined as a prolonged examination and since the follow up examination and the prolonged evaluation do not qualify under Ground Rule 2 contained in the Surgical Fee Schedule as an exception to the Ground Rule, I find that the Applicant is not entitled to any additional reimbursement for the outcome assessment test.

Therefore, applicant is only awarded \$558.19 for the injection.

The claim for the outcome assessment test 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Center for Neurorestorative Medicine	01/29/19 - 01/29/19	\$762.60	Awarded: \$558.19
Total			\$762.60	Awarded: \$558.19

B. The insurer shall also compute and pay the applicant interest set forth below. 06/27/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5,2002 , interest

shall be paid , at the rate of 2% per month, simple,from the arbitration filing date , and ending with the date of payment of the award.

C. Attorney's Fees

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

Respondent shall pay the applicant an attorney fee , in accordance with 11 NYCRR 65-4.6 (d).

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

04/26/2021
(Dated)

Richard Martino

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:
33d08eb4f32476f86ab1b1738cebc2fa

Electronically Signed

Your name: Richard Martino
Signed on: 04/26/2021