

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Almira Sigrid Galdo PT PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-20-1179-2676
Applicant's File No.	311688
Insurer's Claim File No.	0634420280101019
NAIC No.	22055

**ARBITRATION AWARD**

I, Thomas Eck, 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 08/11/2021  
Declared closed by the arbitrator on 08/16/2021

Neil Menashe from Neil Menashe Attorney At Law P.C. participated in person for the Applicant

Crystal Russo from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,913.45**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute has been amended to \$1682.68 to reflect payments made and fee schedule rates.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. The parties also stipulated that Respondent's NF-10 denial of claim forms were timely issued.

### 3. Summary of Issues in Dispute

This arbitration arises out of medical treatment for the Assignor, a 41-year-old female, who was involved in a motor vehicle on 9/15/2018. The Assignor came under the care of the Applicant who is now seeking reimbursement for physical therapy services provided to the Assignor on 3/25/2019-6/26/2019. Respondent denied these services based on Independent Medical Examination (IME) conducted by Dr. William Walsh, DC on 12/28/2018, with a cutoff of 1/11/2019.

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

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

#### **MEDICAL NECESSITY**

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 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]). The burden shifts to the insurer to prove that the services were not medically necessary.

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. (See A.B. Medical Services, PLLC v. Geico Insurance Co., 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]; 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, 2nd and 11<sup>th</sup> Jud Dists 2003]). An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

The IME was conducted by Dr. Walsh on 12/28/2018 - approximately three months post-accident. Dr. Walsh's diagnosis is "Lumbar spine strain, resolved. Right shoulder derangement, status post arthroscopic surgery on 11/13/18, resolved." Range of motion findings were within normal limits. Neurological and orthopedic testing were all within normal limits. Based on the examination, Dr. Walsh determined: "Upon examination, there are no objective clinical findings that correlate with the reported imaging/diagnostic studies or the claimant's subjective complaints. Therefore, there is no need for treatment, follow-up, surgery, diagnostic testing, physical therapy, massage therapy, household help, medical supplies, or transportation services from an orthopedic standpoint."

The case law states that if the insurer presents sufficient evidence establishing a lack of medical necessity, then the burden shifts back to the Applicant to present its own evidence of medical necessity. See: West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc3d 131A (2006).

Applicant relies on the documents in their submission and Respondent's records. After careful review of the record, I find upon the evidence provided that the Applicant has not set forth a medical rationale and factual basis to substantiate the need for continued treatment provided post-IME. The initial evaluation dated 9/21/2018 is too far removed from the IME to rebut the findings on the IME. The follow up evaluations submitted are not substantial enough to rebut the findings of the IME doctor. There is another initial evaluation by this provider dated 3/25/2019. It appears the Assignor finished treating with a previous physical therapist - Park Physical Therapy - and started treating with the Applicant. I find this evaluation too far removed from the IME to rebut the findings of the IME doctor. There are no other substantial evaluations from the time of the IME up through the dates of service that meaningfully discuss the Assignor's progress, or lack

thereof. Respondent has established, by a preponderance of the credible evidence, that the services provided post-IME are not medically necessary. Therefore, Applicant's claim is hereby 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 Suffolk

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

08/22/2021  
(Dated)

Thomas Eck

**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:**  
995c810520754d708e7a97280e09d275

### **Electronically Signed**

Your name: Thomas Eck  
Signed on: 08/22/2021