

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Zwanger-Pesiri Radiology Group LLP  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-19-1152-6659
Applicant's File No.	CF13008863
Insurer's Claim File No.	0457070120101185
NAIC No.	22055

**ARBITRATION AWARD**

I, Michelle Murphy-Louden, 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: EIP

1. Hearing(s) held on 08/19/2021  
Declared closed by the arbitrator on 08/19/2021

Tinamarie Franzoni, Esq. from Choudhry & Franzoni, PLLC participated in person for the Applicant

Jason Ciani, Esq. from Law Office of Daniel R. Archilla participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,231.52**, 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

Whether Applicant is entitled to reimbursement for a left shoulder MRI performed on October 9, 2019, as the result of a September 3, 2019, motor vehicle accident.

Respondent denied reimbursement based upon a December 5, 2019, peer review of Gary Florio, M.D.

This Award is based upon a review of all of the documents contained within the ADR Center electronic case file as of the date of the Award, as well as upon any oral arguments of the parties and any testimony given during the hearing.

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

The 54 year old EIP was reportedly involved in a motor vehicle accident on September 3, 2019, when the vehicle in which she was the restrained driver was struck on the driver's side while stopped at a light.

According to the records, following the accident the EIP was transported by ambulance to Nassau University Medical Center where she presented reportedly complaining in part of left shoulder pain. Left shoulder x-rays were with the impression of no evidence of acute fracture or dislocation. The EIP's diagnosis upon discharge is not indicated in the records.

On September 9, 2019, the EIP presented for initial orthopedic evaluation with Steven Rokito, M.D., reportedly complaining in part of left clavicle pain, bruising, and tenderness and difficulty raising the arm. Following examination, Dr. Rokito diagnosed the EIP in part with left shoulder contusion and recommended rest and ibuprofen.

On September 11, 2019, the EIP presented for initial physiatric evaluation with David Khanan, M.D., reportedly complaining in part of 6/10 left shoulder pain. Examination of the left shoulder reportedly revealed moderate tenderness, moderately limited range of motion, positive Codman's test for supraspinatus pain, positive Supraspinatus Press Test, inability to resist downward pressure, and internal rotation to the L2 level. Dr. Khanan diagnosed the EIP in part with left shoulder contusion and recommended physical therapy.

On October 7, 2019, the EIP was seen in follow-up by Dr. Khanan reportedly complaining in part of 5-6/10 left shoulder pain. Dr. Khanan noted that the EIP was undergoing physical therapy three times per week. Examination of the left shoulder reportedly revealed moderate tenderness, decreased range of motion, 4/5 muscle strength, positive Codman's test for supraspinatus pain, positive Supraspinatus Press Test, inability to resist downward pressure, and internal rotation to the L2 level. Dr. Khanan diagnosed the EIP in part with left shoulder derangement. Dr. Khanan and ordered a left shoulder MRI with contrast "due to pain, decrease ROM and positive orthopedic test." Dr. Khanan also recommended continuation of physical therapy 2-3 times per week and orthopedic follow-up.

On October 9, 2019, the EIP underwent the left shoulder MRI which was with the impression of mild to moderate supraspinatus tendinosis with small focus of calcific tendinitis at the tendon insertion and mild fraying of the overlying bursal margin.

### **RESPONDENT'S PEER REVIEW**

On December 5, 2019, Gary Florio, M.D., performed a peer review of the left shoulder MRI which he concluded was not medically necessary. Dr. Florio opined:

The records do establish this contrast-enhanced left shoulder MRI evaluation as being utilized in a manner outside the accepted clinical standard of care in the practice of Physical Medicine and Rehabilitation for evaluation and management of the injuries and conditions noted to be present in this claimant.

According to the American College of Radiology, MRI testing of the shoulder without and with IV contrast is usually not clinically appropriate in the evaluation of traumatic shoulder pain of any etiology when plain film radiographs have been found to be negative and the contrast-enhanced MRI is then used as the next imaging procedure.

Please see: American College of Radiology, ACR Appropriateness Criteria Shoulder Pain - Traumatic, revised 2017.

The records for this case do establish the left shoulder MRI testing without and with IV contrast under review as being used in a manner inconsistent with the recommendations from the American College of Radiology.

The records do establish this MRI as a clinically inappropriate and medically unnecessary next imaging procedure in the setting of this claimant's post-traumatic left shoulder pain.

The records do not establish this testing as medically necessary to resolve a relevant diagnostic dilemma or to help direct or modify the therapeutic care plan.

The submitted documentation does not establish this claimant as having been appropriate for invasive interventions regarding the left shoulder or any other specific treatment plan options that would have been dependent upon these MRI test results. To the contrary, the records establish conservative management

including physical therapy with therapeutic strengthening exercise as the primary component of the therapeutic care plan and reflect that physical therapy was appropriately prescribed on clinical grounds without reference to or dependence upon any left shoulder MRI test results. Review of the submitted physical therapy progress notes reflects that this claimant was tolerating the ongoing program and does not establish a clinical need to reconsider the conservative nature of this claimant's therapeutic treatment plan regarding the left shoulder.

Under the circumstances of this case, the testing under review was not medically necessary and excessive. The clinical information already obtained, including the history and physical examination, was all that was needed in order to determine the proper therapeutic and management plans.

Furthermore, it should be noted that a therapeutic treatment plan such as the one under review is inconsistent with any significant internal derangement of the left shoulder and inconsistent with the need for the MRI testing under review. Individuals who after spinal trauma are appropriate for therapeutic strengthening exercises to the left shoulder do not have significant left shoulder internal derangement and do not warrant contrast-enhanced MRI testing of the shoulder.

Based upon Dr. Florio's opinion, Respondent denied Applicant's claim.

### **ANALYSIS**

Once an applicant has established a prima facie case of entitlement to No-Fault benefits, the burden then shifts to the insurer to prove that the disputed services were not medically necessary. To meet this burden, the insurer's denial(s) of the applicant's claim(s) must be based on a peer review, IME report, or other competent medical evidence that sets forth a clear factual basis and a medical rationale for the denial(s).

Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc. 3d 128A (App. Term, 2<sup>nd</sup> Dept., 2003); Tahir v. Progressive Cas. Ins. Co., 12 Misc. 3d 657 (N.Y.C. Civ. Ct., N.Y. Co., 2006); Healing Hands Chiropractic, P.C. v. Nationwide Assurance Co., 5 Misc. 3d 975 (N.Y.C. Civ. Ct., N.Y. Co., 2004); Millennium Radiology, P.C. v. New York Cent. Mut., 23 Misc. 3d 1121(A) (N.Y.C. Civ. Ct., Richmond Co., 2009); Beal-Medea Prods., Inc. v GEICO Gen. Ins. Co., 27 Misc. 3d 1218(A) (N.Y.C. Civ. Ct., Kings Co., 2010); All Boro Psychological Servs., P.C. v GEICO Gen. Ins. Co., 34 Misc. 3d 1219(A) (N.Y.C. Civ. Ct., Kings Co., 2012).

I find that Dr. Florio's peer review sets forth a clear factual basis and medical rationale for Respondent's denial of Applicant's claim for the left shoulder MRI in dispute herein and as such I find that Respondent has established a lack of medical necessity for same. Therefore, the burden has shifted to Applicant to present its own evidence of medical

necessity (*see* West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc. 3d 131(A), App. Term, 2<sup>nd</sup> Dept., 2006; Alfa Medical Supplies v. Geico General Ins. Co., 38 Misc. 3d 134(A), App. Term, 2<sup>nd</sup> Dept., 2013).

Dr. Florio supported his opinion with relevant and applicable authority, the ACR Appropriateness Criteria for traumatic shoulder pain. According to the Criteria, a copy of which was submitted into evidence by Respondent, in cases of nonlocalized traumatic shoulder pain with negative x-rays MRI without contrast would usually be appropriate as the next imaging study. In the present case, however, Dr. Khanan ordered the MRI with contrast which the Criteria indicates is not usually appropriate as the next imaging study.

In addition, I find as persuasive Dr. Florio's opinion that there were no treatment plan options that would have been dependent upon the results of the left shoulder MRI. It is noted that while Dr. Khanan stated the clinical reasons why he was ordering the left shoulder MRI (pain, decreased range of motion, positive orthopedic tests), he did not state that the results of the MRI were necessary to direct future treatment. Indeed, on the day he ordered the left shoulder MRI Dr. Khanan also recommended that the EIP continue physical therapy and follow-up with the orthopedist. Clearly, Dr. Khanan was able to prescribe an appropriate treatment plan despite not having the results of the left shoulder MRI. And, as noted by Dr. Florio, the physical therapy notes show that the EIP was tolerating the treatment with no aggravation of her symptoms either during or after treatment.

I further find as persuasive Dr. Florio's opinion that patients who are considered appropriate for post-spinal trauma therapeutic strengthening exercises to the shoulder do not have significant internal derangement and do not warrant MRI testing with contrast.

I find nothing in the submitted records rebutting Dr. Florio's opinion. Therefore, Respondent's denial is upheld.

**ACCORDINGLY, APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.**

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

08/25/2021

(Dated)

Michelle Murphy-Louden

### **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:**  
719fb23f1e115e2b9a6b5151ba366fc5

### **Electronically Signed**

Your name: Michelle Murphy-Louden  
Signed on: 08/25/2021