

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Garden Medical Care, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-21-1227-3327
Applicant's File No.	GMPC 142.01,02
Insurer's Claim File No.	8718455180000001
NAIC No.	22055

ARBITRATION AWARD

I, Pamela Hirschhorn, 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: Injured Person/Claimant

1. Hearing(s) held on 05/24/2022
Declared closed by the arbitrator on 05/24/2022

Michael Lamond, Esq. from Akiva Ofshtein PC participated for the Applicant

Eric Schechner, Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,499.92**, was AMENDED and permitted by the arbitrator at the oral hearing.

\$2,449.93.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The injured person was a 32-year-old male who was involved in the subject motor vehicle accident of April 9, 2021. The claim for extracorporeal shockwave therapy performed on June 23, 2021 and July 7, 2021, was

timely denied based upon the peer review reports of Kenneth Marici, M.D. and Daniel J. Feuer, M.D. The issue to be decided is whether these services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

The injured person was a 32-year-old-male who was involved in the subject motor vehicle accident of April 9, 2021. The claim for extracorporeal shockwave therapy performed on June 23, 2021, was timely denied based upon the peer review report of Kenneth Marici, M.D., and the claim for extracorporeal shockwave therapy performed on July 7, 2021, was timely denied based upon the peer review report of Daniel J. Feuer, M.D. Applicant's counsel amended the amount in dispute to \$2,449.93.

The peer review report of Kenneth Marici, M.D., reflects that a thorough review of medical records and reports was performed. Dr. Marici found that the shockwave therapy billed pursuant to code 0101T, for the lumbar spine and left shoulder was not medically necessary. Dr. Marici's review included a review of the treatment plan by Garden Medical Care, P.C. dated June 23, 2021, radial pressure wave therapy report from Garden Medical Care, P.C., dated June 23, 2021, description of the procedure by Garden Medical Care, P.C. in the form of a form letter, description of the unit by manufacturer, Chattanooga as well as progress notes by Macintosh Medical, P.C. dated April 12, 2021.

Dr. Marici noted that the claimant was initially examined by Aleksandr Kopach, P.A. of Macintosh Medical, P.C., on April 12, 2021. At that time, the claimant had complaints of headaches, bilateral cervical spine pain, left-sided shoulder pain, bilateral thoracic spine pain, and bilateral lumbar spine pain. Dr. Marici discussed the claimant's examination findings on that date and noted that treatment recommendations included pain management which included trigger point injections on the initial date of service, conservative care, MRIs, medications, durable medical goods, and follow-up. Dr. Marici noted that the claimant initiated a protracted course of treatment and was seen on multiple occasions in follow-up at Macintosh Medical. Dr. Marici noted that Dr. Omar Ahmed submitted a form letter

regarding the alleged medical necessity for radial pressure wave therapy on June 23, 2021.

This arbitrator notes that the services are referenced in applicant's submission as extracorporeal shock wave treatment as well as radial pressure wave therapy.

Dr. Marici stated that no specific exam findings were noted by Dr. Ahmed. Dr. Marici concluded that the medical necessity for extracorporeal shockwave therapy was not established. Dr. Marici noted that there was a complete absence of evidence that would warrant or justify the need for use of said procedure in treating the claimant's injuries.

Dr. Marici stated that the Nervomatrix machine utilized to treat the claimant was concerning as such a device is experimental at best and cited to relevant medical literature in support of his position that treatment with the Nervomatrix device does not result in better outcomes, then placebo treatment in terms of pain, pain behavior, functioning, central sensitization, pain catastrophizing, and health benefits. Dr. Marici also stated that there was no need, justification, or medical necessity for utilization of "such devices" in treating this individual, and that a course of conservative care would more than adequately address the claimant's complaints and findings without the need for experimental devices such as "extracorporeal shockwave therapy." Although at the time of hearing, applicant's counsel argued that the peer review by Dr. Marici was insufficient as Dr. Marici referred to the device as a Nervomatrix device and not as a device manufactured by Chattanooga, this arbitrator finds that Dr. Marici also referred to the device as "extracorporeal shockwave therapy," which is the description of the device in applicant's medical records and reports. Thus, this arbitrator finds that applicant's counsel's argument is without merit.

Dr. Marici found that the use of extracorporeal shockwave therapy deviated from accepted medical standards or guidelines as the treating doctor recommended this treatment without clear rationale as to why these services were necessary and how they would benefit the claimant above and beyond a traditional care program. Dr. Marici cited to relevant medical literature in

support of his position that there is a lack of evidence to support the usefulness and effectiveness of shockwave therapy in the treatment of pain. Dr. Marici concluded that the medical necessity for extracorporeal shockwave therapy was not established.

The claim for extracorporeal shockwave therapy performed on July 7, 2021, was denied based upon the peer review of Daniel J. Feuer, M.D. Dr. Feuer found that the shockwave therapy performed on July 7, 2021, for the cervical spine, thoracic spine, and lumbar spine and billed pursuant to Code 0101T x 3, was not medically necessary. Dr. Feuer performed a thorough review of medical records and reports including the NF-3 form dated July 14, 2021, for dates of service July 7, 2021, from Garden Medical Care, P.C., therapeutic shockwave treatment plan dated June 23, 2021, July 7, 2021, and July 14, 2021, from Garden Medical Care, P.C., radial pressure wave therapy report dated June 23, 2021 from Garden Medical Care, P.C., progress notes dated April 12, 2021 through June 7, 2021 from Macintosh Medical, P.C.

Dr. Feuer noted that the claimant was started on a course of physical therapy for the cervical spine, thoracic spine, and lumbar spine. He was also receiving chiropractic treatment for the cervical spine, thoracic spine, and lumbar spine. Dr. Feuer noted that the claimant received physical therapy from April 13, 2021, through May 11, 2021, and chiropractic care from April 14, 2021, through May 11, 2021. Dr. Feuer reviewed a RPW (radio pressure wave therapy report) by Omar Ahmed, M.D., on June 23, 2021, in which the claimant reported subjective complaints of pain in lower back and left shoulder. The musculoskeletal examination of lumbar spine/left shoulder showed tenderness to palpation and decreased range of motion. Paraspinal muscle spasm and extremity muscle spasm. The impression was lower back pain; left shoulder pain; muscle spasm of back. The claimant was recommended radial pressure wave/shockwave therapy. Dr. Feuer noted that on July 7, 2021, the claimant was referred for radial pressure wave/shockwave therapy for the cervical spine, thoracic spine, and lumbar spine and underwent radial pressure wave/shockwave therapy for the cervical spine, thoracic spine, and lumbar spine on that date. Dr. Feuer cited to The AMA (American Medical Association) which defines medical necessity as, "Health care services or products that a prudent physician would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is (a) in accordance with generally accepted standards of medical practice; (b)

clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the convenience of the patient, physician, or other health care provider." (American Medical Association, 2016). Dr. Feuer found that based on the medical records presented for review including the evaluation by Omar Ahmed, M.D., there was no indication for extracorporeal shockwave therapy to the cervical spine, thoracic spine, and lumbar spine performed on July 7, 2021. Dr. Feuer found that the available evidence does not support the effectiveness of shockwave treatment. Dr. Feuer cited to relevant medical literature in support of his position. Since the cited to medical literature referenced that there is no proven utility for shockwave therapy in pain reduction or functional improvement, Dr. Feuer found that shockwave treatment deviated from accepted standard of care and was not medically necessary.

This arbitrator finds that the peer review reports of Dr. Marici and Dr. Feuer, set forth a clear medical rationale for rejection of the claim, noting that shockwave therapy was prescribed without clear medical basis and that utilization of shockwave therapy has not been proven to be efficacious. This arbitrator finds that the peer reviews constituted prima facie proof that the shockwave therapy deviated from accepted standard of care and was not medically necessary, therapy shifting the burden to applicant to demonstrate by a preponderance of the credible evidence that this treatment did not deviate from accepted standard of care and was medically necessary. Applicant failed to submit a rebuttal and thus failed to address the concerns and conclusions of the peer review doctors. Since applicant failed to demonstrate by a preponderance of the credible evidence that the within services were medically necessary, the claim 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 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, Pamela Hirschhorn, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

05/25/2022
(Dated)

Pamela Hirschhorn

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:
025d301fed247d53e52469fdc58cd770

Electronically Signed

Your name: Pamela Hirschhorn
Signed on: 05/25/2022