

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Dr. Jean Pierre Georges Barakat  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-21-1230-3015
Applicant's File No.	JPPC 171.01
Insurer's Claim File No.	8699010160000001
NAIC No.	22055

### ARBITRATION AWARD

I, Alise Schor, 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 (AH)

1. Hearing(s) held on 07/20/2022  
Declared closed by the arbitrator on 07/20/2022

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

Cindy Covelli from Geico Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,099.96**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, the amount in dispute was amended to **\$1,399.96**.

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 bill. They further stipulated that Respondent's Form NF-10 denial of claim forms were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1).

3. Summary of Issues in Dispute

Whether Applicant is entitled to reimbursement for CPT code 0101T rendered to Assignor (AH), a 23-year-old man, on August 24, 2021? There is also a Fee Schedule dispute.

This arbitration stems from Applicant's bill for Extracorporeal shock wave treatment ("ESWT"-billed under CPT code 0101T), performed on the Assignor's cervical and lumbar spine and left shoulder, on August 24, 2021 in connection with injuries he sustained in a motor vehicle accident on November 9, 2020. Respondent denied the treatment based upon the October 4, 2021 Peer Review Report of Dr. Harry Jackson, MD. Applicant submits a late Rebuttal by Dr. Jean Pierre Barakat, MD. As an Arbitrator, I can use my discretion to allow a late submission, see 11 NYCRR 65-4.2 (b)(3)(iv). I normally do not allow a late or supplemental submission when it is provided less than one month prior to the *first* hearing without good cause shown. Herein, Applicant submitted their Rebuttal on July 11, 2022, 9 days prior to the hearing. Applicant points out that this hearing was only scheduled by AAA on June 30, 2022, Twenty (20) days prior to the hearing date. Applicant advises that they submitted the Rebuttal less than 2 weeks after being notified about the hearing. I find that Applicant has proffered a justifiable reason for the lateness and therefore the Rebuttal Report will be considered. Respondent was given an opportunity to submit an Addendum and declined.

The hearing was held via Zoom.

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

##### **Peer Review Report:**

Dr. Jackson lists 58 records that he reviewed. He discusses the Assignor's March 22, 2021 examination by Dr. Clarke and notes that the radial pressure wave therapy in issue was then performed on August 24, 2021. He opines that this treatment was not medically necessary as the Assignor sustained soft tissue trauma in the accident and the standard of care includes physical therapy and analgesics but not ESWT because ESWT has not been proven efficacious in soft tissue injuries and thus deviates from the standard of care.

He references the Journal of Physical Therapy Science, which stated that no valid therapy schemes yet exist and a study that concluded that ESWT is an effective and safe treatment modality but that larger scale studies that demonstrate effectiveness are needed. He also cites to the Wang Journal of Orthopedic Surgery and Research for the opinion that ESWT is ineffective or less effective with the results comparable to the placebo effect. Finally, he cited to the general definition of medical necessity provided by the American Medical Association.

##### **Rebuttal:**

Dr. Jean Pierre Georges Barakat, the Applicant, has submitted a Rebuttal to the Peer Review. He states that the treatment in issue was prescribed to relieve the patient's cervical, lumbar and left shoulder pain and spasms, as well as improve mobility and ROM, decrease pain, decrease stiffness, and break up soft tissue adhesion. He explained how this treatment has FDA approval and proven efficacy for conditions including musculoskeletal disorders, lateral epicondylitis, calcific tendinopathies, nonunion body fractures and plantar fasciitis, and evidence has further shown that shockwave therapy has had beneficial effects as a treatment for additional musculoskeletal disorders with minimal complications.

Dr. Barakat discusses shockwave therapy in general and states that herein, it was recommended to facilitate the healing process quicker and allowing other therapeutic modalities to work. Dr. Barakat discusses which of this Assignor's specific complaints, knee pain, back pain, neck pain and shoulder pain, this treatment is commonly used to treat and explains why this treatment is recommended. He explains ESWT in general and concludes that a thorough evaluation was conducted, documenting physical examination, the patient's subjective complaints, range of motion deficits and recommendations for treatment. The patient was recommended for physical and chiropractic therapy. The patient was recommended for ESWT, in order to return the patient to pre-injury status. Dr. Barakat cites to medical authority in support of his opinion that the treatment was medically necessary.

### **Findings:**

As it has been stipulated that Applicant has established its prima facie showing of entitlement to reimbursement, the burden now shifts to the Respondent to demonstrate lack of medical necessity. See Citywide Social Work & Psychological Services, PLLC v. Allstate Ins. Co., 8 Misc 3d 1025 A (2005). A denial premised on a lack of medical necessity must be supported by competent evidence such as an independent medical examination, a peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim. Healing Hands Chiropractic, P.C., v. Nationwide Assur. Co., 5 Misc., 3d 975, 787 N.Y.S. 2d 645 (Civ. Ct., New York County, 2004); King's Med. Supply Inc. v. Country Wide Ins. Co., 5 Misc. 3d 767, 783 N.Y.S. 2d 448.

I find that Respondent's Peer Review Report is sufficient to meet Respondent's burden of proof of lack of medical necessity. Therefore, the burden shifts back to Applicant to present competent medical proof as to the medical necessity of the ESWT by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. GEICO, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871[U], 2006 WL 2829826 (App. Term 2d & 11th Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Central Fire Mutual Insurance Company, 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2d & 11th Dists. 7/3/08). Ultimately, the burden of proof rests with the Applicant (See Insurance Law Section 5102).

To meet that burden, Applicant submits a Rebuttal by Dr. Barakat. I am faced with conflicting opinions concerning the medical necessity for the treatment herein. There are no legal issues to resolve. This dispute involves solely an issue of fact, that is, whether or not the ESWT treatment was medically necessary. Resolution of that fact is

determined by which opinion is accepted by the trier of fact. After reviewing the totality of the evidence and hearing the arguments presented by the parties, I find that Applicant is entitled to reimbursement.

A treatment or service is medically necessary if it is "appropriate, suitable, proper and conducive to the end sought by the professional health service in consultation with the patient. It means more than merely convenient or useful treatment or services, but treatment or services that are reasonable in light of the patient's injury, subjective and objective evidence of the patient's complaints of pain, and the goals of evaluating and treating the patient." Fifth Avenue Pain Control Center v. Allstate, 196 Misc. 2d 801, 807-808 (Civ. Ct. Queens Cty. 2003). Medically necessary treatment or services must be "consistent with the patient's condition, circumstances and best interest of the patient with regard to the type of treatment or services rendered, the amount of treatment or services rendered, and the duration of the treatment or services rendered." *Id.* Medical services are compensable where they serve a valid medical purpose. Sunrise Medical Imaging PC v. Lumbermans Mutual, 2001 N.Y. Slip Op. 4009.

Furthermore, in order for an applicant to prove that the disputed services were medically necessary, it must meaningfully refer to, or rebut, the conclusions set forth in the peer review. High Quality Medical, P.C. v. Mercury Ins. Co., 26 Misc.3d 145(A), 2010 N.Y. Slip Op. 50447(U) (App. Term 2nd, 11th and 13th Jud. Dists 2010); Pan Chiropractic, P.C. v. Mercury Ins. Co., 24 Misc.3d 136(A), 2009 N.Y. Slip Op. 51495(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2009). I find that the Rebuttal meaningfully refers to and rebuts Dr. Jackson's conclusion. Dr. Barakat addresses Dr. Jackson's conclusions and offers a contrary opinion which is supported by reference to medical authority. I find the opinions in the Rebuttal report meaningfully refer to and rebut, the conclusions set forth in the Peer Review Report.

### **Fee Schedule:**

Respondent has the burden of coming forward with competent evidentiary proof to support its fee schedule defenses. See, Robert Physical Therapy PC v. State Farm Mutual Auto Ins. Co., 2006 NY Slip 26240, 13 Misc.3d 172, 822 N.Y.S.2d 378, 2006 N.Y. Misc. LEXIS 1519 (Civil Ct, Kings Co. 2006). See also, Power Acupuncture PC v. State Farm Mutual Automobile Ins. Co., 11 Misc.3d 1065A, 816 N.Y.S.2d 700, 2006 NY Slip Op 50393U, 2006 N.Y. Misc. LEXIS 514 (Civil Ct, Kings Co. 2006). If Respondent fails to demonstrate by competent evidentiary proof that a plaintiff's claims were in excess of the appropriate fee schedules, defendant's defense of noncompliance with the appropriate fee schedules cannot be sustained. See, Continental Medical PC v. Travelers Indemnity Co., 11 Misc.3d 145A, 819 N.Y.S.2d 847, 2006 NY Slip Op 50841U, 2006 N.Y. Misc. LEXIS 1109 (App. Term, 1st Dept., per curiam, 2006).

In support of the Fee Schedule defense, Respondent proffers an Affidavit by Crystal Russo, CPC, who provides a persuasive, well-reasoned analysis in support of her position that the shockwave therapy is reimbursable at one unit per day in the amount of \$ 700.39. She noted that CPT Code 0101T is found in the Category III Codes Section of the NYS Workers' Compensation Fee Schedule. CPT code 0101T description is extracorporeal shock wave involving musculoskeletal system, not otherwise specified,

high energy and the relative value is "BR." The description does not designate the services as an anatomic specific region or as "each area or section." Therefore, she determined that the services Applicant billed cover the entire musculoskeletal system and should be reimbursed only once per day.

In support of their billing, Applicant submits an Affidavit from Connie Barnes, a Senior Fee Schedule Analyst, who performed the bill review on behalf of Sedgwick. The bill review was for services rendered by a different provider on behalf of a different Applicant to a different Assignor. CPT Code 0101T was addressed as that Applicant billed 2 units as it was performed 2 times during the same session. This Coder discusses Surgery Ground Rule 5 Multiple or Bilateral Procedure and General Ground Rule 14 Exempt from Modifier 51 Codes. The conclusion is that the first/primary charge for 0101T is \$699.98 and the second and third charge are subject to the multiple procedure rule discount. Reimbursement is calculated at \$350.20 (2.78 RVU x \$251.94 x 50%).

Applicant's counsel argues that Ms. Russo's affidavit is non-specific, however, Ms. Barnes' Affidavit is specifically for another claim and does not specifically detail of the within matter. Both Affidavits however, do discuss the proper reimbursement amount for CPT Code 0101T. I am persuaded by Respondent's coder's affidavit that Code 0101T should only be reimbursed once per session, not body part. Accordingly, As such, I find that Applicant is entitled to payment of one line of ESWT at \$700.39 in total satisfaction of its claim.

Accordingly, in light of the foregoing, based on the arguments of the parties' representatives, and after thorough review and consideration of all submissions, Applicant's is awarded \$ 700.39. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any additional issues raised in the hearing record are held to be moot and/or waived insofar as they were not raised at the time of the hearing.

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	Amount Amended	Status
	<b>Dr. Jean Pierre Georges Barakat</b>	<b>08/24/21 - 08/24/21</b>	<b>\$2,099.96</b>	<b>\$1,399.96</b>	<b>Awarded: \$700.39</b>
<b>Total</b>			<b>\$2,099.96</b>		<b>Awarded: \$700.39</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 12/09/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 12/09/2021 until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty- day month.

C. Attorney's Fees

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

As the claim was filed subsequent to the Sixth Amendment to 11 NYCRR §65-4 (Insurance Regulation 68-D) which took effect on February 4, 2015, Attorney's Fees shall be calculated pursuant to the amended terms, as follows: 20 percent of the amount of first-party benefits, plus interest thereon, subject to a maximum fee of \$1,360. [11 NYCRR §65-4.6(d)]. There is no minimum fee.

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

07/29/2022  
(Dated)

Alise Schor

### **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:**  
f61fe54feb481171a672a1568b8516c1

**Electronically Signed**

Your name: Alise Schor  
Signed on: 07/29/2022