

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Precision Pain Care & Rehab
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-20-1188-8692
Applicant's File No.	20-011041
Insurer's Claim File No.	0516453780000002
NAIC No.	22055

ARBITRATION AWARD

I, Kent Benziger, 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: A.A.

1. Hearing(s) held on 08/01/2022
Declared closed by the arbitrator on 08/01/2022

Jeanine Oberster from The Licatesi Law Group, LLP participated for the Applicant

Robert LoFurno from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,006.18**, 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

On June 15, 2020, the Assignor/Eligible Injured Party, a 28-year-old female, was, by history, involved in a motor vehicle accident. In dispute is the October 3, 2020 administration of a cervical epidural steroid injection, interlaminar approach (C7-T1) level with epidurography. The Respondent denied reimbursement based on the accompanying peer review of Dr. Jay Wiess, while Dr. Jeffrey Chacko has submitted a rebuttal to the peer review.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance

of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

4. Findings, Conclusions, and Basis Therefor

On June 15, 2020, the Assignor/Eligible Injured Party, a 28-year-old female, was, by history, involved in a motor vehicle accident. On July 20, 2020, the Assignor was evaluated by Dr. Chacko for complaints of neck and left shoulder pain. The neck pain was radiating to the left shoulder and upper arm. On examination, strength was decreased in left shoulder abduction. Range of motion was also decreased in the left shoulder along with range of motion. Conservative care and an EMG/NCV studies were ordered.

On July 24, 2020, a upper extremity EMG/NCV was performed which was interpreted as revealing evidence of left C6 radiculopathy. On July 29, 2020, an MRI of the cervical spine was performed which was interpreted as revealing reversal of the cervical lordosis and C5-C6 posterior central disc herniation indenting on the ventral CSF space.

Through an evaluation with a Dr. Miller on September 23, 2020, the Assignor continued to have neck and left shoulder pain as well as paresthesia. Decreased left shoulder range of motion was noted and a shoulder arthroscopy was discussed. On the same day, the Assignor was evaluated again by Dr. Chacko Tenderness was noted in the left cervical region. Strength was decreased in the left wrist. Physical therapy, acupuncture, Mobic for pain, and a cervical epidural injection were ordered.

On October 3, 2020, Dr. Chacko performed a cervical epidural steroid injection, interlaminar approach (C7-T1) level with epidurography. The pre and post-operative diagnosis was of cervical radiculopathy/herniated disc cervical spine. The Applicant, Precision Pain Care & Rehab, through Dr. Chacko billed \$1006.16 for the procedure consisting of the injections (CPT 62321, \$503.88), epidurography (CPT 72275-59 (\$161.30), Betamethasone Acet & Sod Phos (J0702, \$40.00), LOCM 200-299 mg/ml Iodine (Q9966, \$1.00), Supp/Mat Provide-Phys Not W/Visit CPT 99070, \$300.00).

Denial/Peer Review. The Respondent issued a denial for the claim based on the accompanying peer review of Dr. Jay Weiss. From his review of the medical records, Dr. Weiss found no evidence of nerve root compromise or persistent upper extremity abnormalities of strength, sensation or reflexes. He concluded there was no significant persistent clinical evidence of radiculopathy and, therefore, a cervical epidural injection would not be indicated. He cited the following:

According to House et al in Cervical Epidural steroid injection Techniques and Evidence "Cervical epidural steroid injection are effective short-term treatment of radicular pain." He notes indications are cervical radicular pain, cervical radiculitis and cervical radiculopathy. Nonradicular pain is not considered an indication.

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According to Epstein, N Cervical epidural steroid injection has no documented long-term efficacy, and carries severe risks and complications.

He cited sources that cervical epidural injections may be indicated for persistent non-responding radicular pain, but he found the medical records failed to support such a determination. Dr. Weiss further opined it was more appropriate to first determine if there was response to treatment of the left shoulder.

Rebuttal. Dr. Jeffrey Chacko has submitted a rebuttal to the peer review. Dr. Chacko agreed with the peer reviewer that prior to the administration of cervical epidural injections, radiculopathy must be documented and the Assignor must not be responding to conservative care. In this instance, Dr. Chacko stated the EMG/NCV documented evidence of left C6 radiculopathy and that was corroborated by the findings of C5-C6 posterior central disc herniation. He found the Assignor had both symptoms of radiating pain and paresthesia corroborated by the clinical and diagnostic findings. He then cited the following authoritative sources on the benefits of EMG/NCV studies.

Studies have shown cervical epidural steroid injections presented positive results for both short- and long-term relief. Powlingson & Kirshenbaum and multiple other studies showed excellent pain relief in over 60% of patients with cervical radiculitis treated with cervical epidural steroid injections while other conservative modalities did not help them.

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Randomized trials showed strong evidence of short-term pain relief (less than 6 months) after transforaminal epidural injections and moderate evidence for long-term pain relief (more than 6 months).

Dr. Chacko concluded that the clinical medical findings and authoritative sources established the necessity of the injections for radiculopathy which persisted despite conservative care.

Analysis. A presumption of medical necessity attaches to a Respondent's admission of the Applicant's timely submission of proper claim forms. The Respondent then bears the burden to prove that the treatment was not medically necessary Kings Med. Supply Inc. v. Country-Wide Ins., 5 Misc.3d 767 (2004); Behavioral Diagnostics v. Allstate Ins. Co., 3 Misc.3d 246 (2004); A.B. Med. Servs v. Geico Ins. 2 Misc.3d 16 (App. Term 2d Dept.

2003). In this case, the peer review must submit "objective testimony or evidence to establish that his opinion is what is generally accepted in the medical profession." *Williamsbridge Radiology v. Travelers*, 14 Misc.3d 1231(a) (Civ. Ct Kings Co. 2007). When a carrier uses a peer review as basis for the denial, the report must contain evidence of the applicable generally accepted medical/professional standards as well as the provider's departure from those standards. *Acupuncture Prima Care v. State Farm Mut. Auto Ins. Co.* 17 Misc. 3d 1135 (Civ. Ct. Nassau, 12/03/07). Therefore, a peer reviewer must thoroughly review the relevant medical records and give evidence.

As a finding of fact, the peer review is not persuasive. As established in the treating provider's rebuttal, the Assignor was properly diagnosed with cervical radiculopathy. The Assignor had symptoms of radiating pain and paresthesia. There was reduced range of motion with weakness in the left extremities. These symptoms and clinical findings were corroborated by the diagnostic findings. In sum, Dr. Chacko's records are more credible in finding that the Assignor had cervical radiculopathy that failed to respond to conservative care. The peer reviewer failed to adequately discuss the diagnostic findings. A peer review must incorporate, discuss and review the patient's medical history including all positive clinical and diagnostic findings. *Carle Place Chiropractic v. New York Central Mut. Fire Ins. Co.*, 19 Misc.3d 1139(A), (Dist. Ct. Nassau Co., Andrew M. Engle, J., May 29, 2008). Further, Dr. Weiss' conclusion that the treating provider must first treat the shoulder injury prior to considering cervical injections is conjecture. Two injuries - which may or may not be related - can be treated separately. In sum, the Respondent has failed to sustain its burden of proof of lack of medical necessity. *Nir v. Allstate Insurance Company*, 7 Misc.3d 544, 546, 547 (2005). Applicant is awarded reimbursement for the treatment in dispute. In addition, the Respondent has also failed to raise a fee scheduled objection to the Applicant's billing of \$300.00 for supplies pursuant to CPT 99070.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: *LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co.*, 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

APPLICANT IS AWARDED REIMBURSEMENT OF \$1,006.18, TOGETHER WITH INTEREST AND ATTORNEYS' FEES.

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
	Precision Pain Care & Rehab	10/03/20 - 10/03/20	\$1,006.18	Awarded: \$1,006.18
Total			\$1,006.18	Awarded: \$1,006.18

- B. The insurer shall also compute and pay the applicant interest set forth below. 12/22/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest. The insurer shall compute and pay to the Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

Attorney's Fees. As said case was filed on or after February 4, 2015, Applicant is awarded attorney's fees for the total amount of first party benefits awarded. Pursuant to 11 NYCRR 65-4.6(d)(e), the Applicant is awarded 20 percent of the amount of the first party-benefits, with no minimum fee and a maximum \$1,360.00 which is the total amount awarded one Applicant in one action from one provider. See: LMK Psychological Services, P.C. v. State Farm Mut. Auto Ins. Co., 46 A.D.3d 1290; 849 N.Y.S.2d 310 (3 Dept. 2007).

- 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 Orange

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

08/24/2022

(Dated)

Kent Benziger

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:
fc5f885a62926e4468631e5ed9daaf52

Electronically Signed

Your name: Kent Benziger
Signed on: 08/24/2022