

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Essential Rx  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-21-1202-1934  
Applicant's File No. BT21-130679  
Insurer's Claim File No. 0614508750101019  
NAIC No.

**ARBITRATION AWARD**

I, Athena T. Buchanan, 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: claimant

1. Hearing(s) held on 08/12/2022  
Declared closed by the arbitrator on 08/12/2022

Krikor Ghazarian, Esq. from The Tadchiev Law Firm, P.C. participated for the Applicant

Jennifer Zangler-Scaduto, Esq. from Geico Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,359.20**, was NOT AMENDED at the oral hearing.  
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established its prima facie case of entitlement to No-Fault benefits and that Respondent's NF-10/Denial of Claim form was timely issued in accordance with 11 NYCRR 65-3.8(a)(1).

3. Summary of Issues in Dispute

The claimant, a 45-year-old male, was involved in a motor vehicle accident on October 19, 2020, as a restrained driver. As a result of the accident, the claimant sustained multiple injuries and was initiated on a course of rehabilitative care. This dispute arises

from a claim for Celecoxib capsules and Lidocaine ointment dispensed on December 14, 2020. Respondent denied the claim based on a Peer Review by Cyrus Kao, MD, dated January 20, 2021. The issue to be decided is whether the medication was medically necessary.

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

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

The issue of whether treatment is medically unnecessary cannot be resolved without resort to meaningful medical assessment, Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co., 2009 NY Slip Op 00351 (App Div 2d Dep't., Jan. 20, 2009); Channel Chiropractic, P.C. v. CountryWide Ins. Co., 2007 Slip Op 01973, 38 A.D.3d 294 (1st Dep't. 2007); Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 2007 NY Slip Op 27427, 17 Misc.3d 97 (App Term 1st Dep't., 2007), such as by a qualified expert performing an independent medical examination, conducting a peer review of the injured person's treatment, or reconstructing the accident. Id.

In the present case, Respondent denied the Lidocaine ointment and Celecoxib tablets based on a Peer Review by Cyrus Kao, MD. According to Dr. Kao, all types of pain should first be treated with nonpharmacologic therapy and if pain is persistent, then pharmacologic therapy may be utilized. It was asserted that nociceptive pain is treated with NSAID as first line therapy and topical agents as second or third line therapy. According to Dr. Kao, if a patient is tolerant or not responding to other treatments, lidocaine may be considered. It was further asserted that gastrointestinal consequences of NSAIDs and the cardiovascular events of COX-2 inhibitors are significant and need to be taken into account when prescribing this group of analgesics, such as Celecoxib to patients. Lastly, Dr. Kao asserted that the sum of the medical records reviewed as well as clinical presentation reflect that the claimant is treating for musculoskeletal pain rather than the indicated neuropathic pain, and as such the use of topical lidocaine is not appropriate. Based on the foregoing, Dr. Kao concluded that the management followed in this case does not follow the standard of care and the medication dispensed herein was not medically necessary.

In opposition, Applicant relied on a Rebuttal by David Gamburg, MD. According to Dr. Gamburg, neuropathic pain is not the only indication for lidocaine and evidence supports efficacy of topical NSAIDs for the treatment of acute strains and sprains. It was further noted that Celecoxib has an FDA indication for the management of acute pain.

After careful review of the record and consideration of the parties' oral arguments, I find in favor of Applicant. I find that Dr. Gamburg sufficiently addressed Dr. Kao's conclusions with relevant and meaningful reference to the clinical record and established

that the medication was medical necessary to provide pain relief and enhance the effect of conservative treatment. Accordingly, Respondent's denial is vacated.

Next, Respondent contended that Applicant billed in excess of the fee schedule.

In opposition, Applicant contended that absent the underlying excerpt from the Redbook, Respondent failed to demonstrate that the recommended reimbursement amount is in accordance with the fee schedule.

In reviewing the evidence, I agree with Applicant. Accordingly, inasmuch as Respondent failed to submit any supporting documentation or an affidavit from a medical expert or certified coder in support of its defense, its defense cannot be sustained. *See, Cornell Medical P.C. v. Mercury Casualty Co.*, 24 Misc.3d 58 (App. Term 2d, 11 & 13 Dists. 2009).

Applicant's claim is awarded in its entirety.

Any further issues raised in the record are held to be moot and/or waived insofar as not raised at the time of the hearing. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

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
	Essential Rx	12/14/20 - 12/14/20	\$2,359.20	Awarded: \$2,359.20
Total			\$2,359.20	Awarded: \$2,359.20

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/28/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The insurer shall compute interest and pay Applicant the amount of interest computed from the filing date as indicated above at the rate of 2% per month, simple, not compounded, calculated on a pro rata basis using a thirty day month and ending with the date of payment of the award.

C. Attorney's Fees

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

Effective to filings on or after February 6, 2015, this case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4(Insurance Regulation 68-D). As amended, 11 N.Y.C.R.R. §65-4.6(d) reads: "For all other disputes subject to arbitration or court proceedings, subject to the provisions of subdivision (a) of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1360. If the nature of the dispute results in an attorney's fee that could be computed in accordance with the limitations prescribed in both subdivision (c) and this subdivision, the higher attorney's fee shall be payable."

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

09/12/2022  
(Dated)

Athena T. Buchanan

### **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:**  
10ccb9f71067a8605ed0773512600709

### **Electronically Signed**

Your name: Athena T. Buchanan  
Signed on: 09/12/2022