

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Westbury Physical Therapy & Chiropractic,
PLLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-22-1261-4107
Applicant's File No.	
Insurer's Claim File No.	0621332300101037
NAIC No.	22063

ARBITRATION AWARD

I, Ioannis Gloumis, 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 | 02/28/2023 |
| Declared closed by the arbitrator on | 02/28/2023 |

Stephen Athan, D.C. from Westbury Physical Therapy & Chiropractic, PLLC participated virtually for the Applicant

Daniel Lissauer, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,039.14**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount of \$1,039.14 was amended by Applicant during the arbitration hearing to \$1,031.40.

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

3. Summary of Issues in Dispute

Applicant seeks reimbursement of charges for physical therapy services that were performed from February 4, 2021 through February 26, 2021, following a January 29, 2020 motor vehicle accident. Respondent denied the claim in dispute based upon the independent medical examination ("IME") that was performed by Edward Mills, M.D. on October 20, 2020.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in the American Arbitration Association's Electronic Case Folder in MODRIA, said submissions constituting the record in this case. This award is based upon the arguments that were presented by the parties during the arbitration hearing and the documentary evidence submitted by the parties. There were no witnesses that testified during the arbitration hearing.

SUMMARY OF FACTS

The EIP, then a 23-year-old male driver, was injured in a motor vehicle accident on January 29, 2020. Following the accident, the EIP went to the emergency department of Winthrop Hospital, where he was evaluated, treated, and later discharged. Thereafter, the EIP sought private medical attention for injuries to the neck, low back, left knee, left ankle, and left foot. The EIP underwent a course of conservative treatment, which included physical therapy and chiropractic care. Applicant performed physical therapy services from February 4, 2021 through February 26, 2021.

Applicant billed Respondent \$1,039.14 for the physical therapy services that were performed from February 4, 2021 through February 26, 2021. Respondent's claim specific denial shows that Respondent received Applicant's claim for the services in dispute on March 15, 2021.

LEGAL STANDARDS FOR PRIMA FACIE CASE

To establish a prima facie case, an applicant is required to submit proof that it timely sent its claim for no-fault benefits to the insurer, that the insurer received the claim, and that the insurer failed to pay or deny the claim within 30 days. See *Amaze Med. Supply*

Inc. v. Allstate Ins. Co., 3 Misc.3d 133(A) (App Term, 2d & 11th Jud Dists 2004); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767 (Civ Ct, NY County 2004).

An insurer's denial of claim form indicating the date on which it was received adequately establishes that the applicant sent, and that the insurer received the claim. *Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co.*, 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005).

APPLICATION OF LEGAL STANDARDS TO THE CLAIM

Since Respondent's claim specific denial shows that Respondent received Applicant's claim for the services in dispute on March 15, 2021, Applicant has established its prima facie case. Moreover, Respondent timely denied the claim in dispute on March 24, 2021 based upon the defense of lack of medical necessity predicated upon the IME that was performed by Dr. Edward Mills on October 20, 2020.

DEFENSE - LACK OF MEDICAL NECESSITY

Orthopedic IME - Edward Mills, M.D. (October 20, 2020)

The October 20, 2020 IME report from Dr. Mills documented that the EIP presented with complaints of pain in the neck, low back, and left ankle/foot at the time of the IME. Dr. Mills stated that ranges of motion were performed with a hand-held goniometer. Dr. Mills documented that the examination revealed restricted range of motion in the cervical spine in all planes, restricted range of motion in the thoracic spine in flexion, extension, and right lateral bending, and restricted range of motion in the lumbar spine in flexion, extension, and right lateral bending. There were complaints of pain with motion. There were complaints of tenderness on palpation throughout the spine. There were no palpable muscle spasms noted in the cervical, thoracic, or lumbar spine. Straight leg raising test was negative. Lhermitte's sign was negative. The neurological examination of the bilateral upper and lower extremities was documented as normal.

Moreover, the examination of the left shoulder revealed restricted ranges of motion; however impingement sign was noted as negative. Range of motion was also restricted in the left hip; however, Faber test was documented as negative. Range of motion in left

knee flexion was restricted. There was a complaint of tenderness anteriorly on palpation. Dr. Mills stated that the EIP was able to straight leg raise with good strength, varus/valgus stress test was stable, and anterior drawer sign was negative. There was no joint line tenderness noted in the left knee. Examination of the left ankle/foot revealed restricted range of motion and dorsiflexion. Drawer sign was negative. Dr. Mills provided the following diagnoses: resolved cervical spine, thoracic spine, lumbar spine, left shoulder, and left hip sprains/strains, resolved left knee sprain, and resolved left ankle/foot sprain. Dr. Mills opined that there was no evidence of a disability and that no further orthopedic treatment was indicated for the cervical spine, thoracic spine, lumbar spine, left shoulder, left hip, left knee, and left ankle/foot; and that an end result had been reached in the orthopedic surgery specialty.

Dr. Mills further stated that the examination revealed no objective findings such as spasms or positive tests consistent with pathology; although there were complaints of tenderness for the cervical spine, lumbar spine, and left knee, these findings are subjective, decreased ranges of motion are findings on range of motion testing that are voluntary movements, which are under the control of the claimant being examined, and are not substantiated by any objective findings on examination; and the neurological examination was normal.

Medical Evidence

Applicant presented the examination report from the October 13, 2020 evaluation that was performed by Engracia Lazatin, M.D. In the report, Dr. Lazatin stated that the MRI of the left knee that was performed on April 1, 2020 revealed a tear of the anterior horn of the medial meniscus, as well as an MCL sprain; the examination of the knees revealed restricted range of motion in flexion bilaterally, internal rotation on the left, and external rotation on the left; Apley's compression (L>R), patellar grind (L), patellar apprehension (L), McMurray's (L>R), and Bounce-Home (L) tests were positive; and tenderness was documented in the femoral condyle medially and laterally, and the tibial eminence medially on the left, with mild to moderate crepitus bilaterally. Dr. Lazatin's diagnosis on that date consisted of left knee derangement as noted on the MRI. The treatment plan was to continue in-office physical therapy for the left knee and to follow-up with an orthopedist. Acupuncture was advised for pain and inflammation. The EIP was to begin stretching, myofascial work, TENS, and heat treatment.

Respondent's evidence contains a copy of the MRI report for the MRI of the left knee dated April 1, 2020, which documented an impression of a tear of the anterior horn of the medial meniscus, a medial collateral ligament sprain, medial and lateral retinacular sprains, and joint effusion.

LEGAL STANDARDS FOR DEFENSE OF LACK OF MEDICAL NECESSITY

It is well established that the burden is on the insurer to prove that the medical treatment was medically unnecessary. See *A.B. Med. Servs., PLLC v. GEICO Ins.*, 2 Misc.3d 26 (App Term, 2d & 11th Jud Dists 2003); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767, 772.

A denial premised on 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. See *Amaze Med. Supply Inc. v. Eagle Ins. Co.*, 2 Misc.3d 128(A) (App Term, 2d & 11th Jud Dists 2003); *King's Med. Supply Inc. v. Country-Wide Ins. Co.*, 5 Misc.3d 767, 771.

Where the insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the claimant, which must then present its own evidence of medical necessity. See *Prince, Richardson on Evidence* §§ 3-104, 3-202 (*Farrell 11th ed*); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131(A) (2006).

DECISION

Having reviewed the evidence presented, I find that Applicant has presented sufficient contemporaneous medical evidence that successfully rebuts the IME report of Dr. Mills, establishes that the left knee injury was not completely resolved on October 20, 2020, and that further orthopedic treatment was medically necessary. The IME report by Dr. Mills documented restrictions in ranges of motion, including the left knee. The October 13, 2020 examination report from Dr. Lazatin documented continued complaints of pain and the examination of the knees revealed restricted range of motion in flexion bilaterally, internal rotation on the left, and external rotation on the left; Apley's compression (L>R), patellar grind (L), patellar apprehension (L), McMurray's (L>R), and Bounce-Home (L) tests were positive; and tenderness was documented in the femoral condyle medially and laterally, and the tibial eminence medially on the left, with mild to moderate crepitus bilaterally. Dr. Lazatin's diagnosis on October 13, 2020 consisted of left knee derangement as noted on the MRI. The treatment plan was to continue in-office physical therapy for the left knee and to follow-up with an orthopedist. Acupuncture was advised for pain and inflammation. The EIP was to begin stretching, myofascial work, TENS, and heat treatment. The MRI report for the MRI of the left knee dated April 1, 2020 documented an impression of a tear of the anterior horn of the medial meniscus, a medial collateral ligament sprain, medial and lateral

retinacular sprains, and joint effusion. I am not persuaded that the EIP's injuries in the left knee were completely resolved on October 20, 2020 and that further orthopedic treatment was not medically necessary. I defer to the findings by the treating physician during the physical examination of October 13, 2020 and his recommendation that continued orthopedic treatment was medically necessary.

Accordingly, Applicant's claim is hereby granted 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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Westbury Physical Therapy & Chiropractic, PLLC	02/04/21 - 02/26/21	\$1,039.14	\$1,031.40	Awarded: \$1,031.40
Total			\$1,039.14		Awarded: \$1,031.40

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/08/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay Applicant the amount of interest computed from the date of filing, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of *11 NYCRR 65-3.9(c)* (stay of interest).

C. Attorney's Fees

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

Respondent shall also pay Applicant an attorney's fee in accordance with *11 NYCRR 4.6*.

- 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 NY

SS :

County of Nassau

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

03/23/2023

(Dated)

Ioannis Gloumis

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:
f38c68e50d07f81f6efe44d03391db1e

Electronically Signed

Your name: Ioannis Gloumis
Signed on: 03/23/2023