

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

5 Star Chiropractic Services, PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-22-1247-6546
Applicant's File No.	5STAR 752.01
Insurer's Claim File No.	0599762030101039
NAIC No.	22063

### ARBITRATION AWARD

I, Bonnie Link, 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: the EIP

1. Hearing(s) held on 03/14/2023  
Declared closed by the arbitrator on 03/14/2023

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

Iqra Shah, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$974.71**, 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

This arbitration arises out of treatment of a 47-year-old female for injuries sustained in a motor vehicle accident that occurred on February 6, 2021. The Applicant seeks reimbursement in the amount of \$974.71, representing the balance of a bill for an evaluation and an upper EMG/NCV conducted on March 11, 2021. The Respondent paid for the evaluation that was conducted before the testing and denied the EMG/NCV based on a Peer Review by Robert Sohn, D.C., dated March 26, 2021, that found that the treatment was not medically necessary. It now asserts that the denials of the remaining bills based on the peer review, be arbitrated in the New Jersey no-fault forum, Forthright Solutions, pursuant to the insured's policy of insurance.

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

This matter is determined after reviewing the documents contained in the electronic case folder at the closing of the file and the presentations 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. To the extent that the issues determined herein were not raised by the parties, "the arbitrator may . . . independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 NYCRR 65- 4.5(o)(1).

The hearing was conducted via Zoom and all parties appeared.

It is well settled that an applicant establishes its prima facie entitlement to payment by proving that it submitted a claim setting forth the facts and the amount of the loss sustained and that payment of no fault benefits were overdue (see Insurance Law § 5106[a]; *Mary Immaculate Hospital v Allstate Ins. Co.* 5 A.D.3d. 742 Second Dep't 2004.

The Respondent contends that this action should not have been brought in this forum.

The EIP is a 47-year-old female who was operating a motor vehicle and was involved in a motor vehicle accident on February 6, 2021. At the time of the accident and the treatment, she was a resident of New Jersey. She was the insured on the Respondent's policy and this policy indicates a New Jersey address. She came under the care of Allan Ross Wattenmaker, D.C. and Gary Stevens, D.C., of 5 Star Chiropractic, whose office is in Brooklyn, New York. Dr. Wattenmaker recommended the testing and Dr. Stevens conducted it.

The Respondent argues that, according to this New Jersey policy, that was issued to a New Jersey insured for a vehicle that was to be housed in New Jersey, and because the services were rendered to the New Jersey resident-insured, this matter should be heard by the New Jersey no-fault forum, Forthright Solutions. In addition, the Respondent asserts that the policy contains a choice of law provision that requires New Jersey law to be applied.

The issues presented here were presented at a prior linked matter wherein the undersigned determined that that matter needed to be dismissed without prejudice to that it could be arbitrated in New Jersey. See, *All City Medical Supply Inc and Geico Insurance Company*, AAA Case No. 17-21-1219-8939 (12/13/22).

The Respondent has submitted the policy, the Declarations Page, and the police report to support its factual contentions and its legal and venue arguments. Further, the Respondent's attorney submitted a brief which shows that the New Jersey, No-Fault laws

are quite different from the New York State no-fault laws. The laws in New Jersey govern how medical necessity must be established before treatment is rendered. In New Jersey, there are also certified medical review organizations to determine medical necessity, standards for medical review organizations (See, N.J.A.C. 11:3-5.8 and 11:3-5.9), and pre-arbitration discovery.

The Respondent's brief states:

*In the State of New Jersey, medical providers are required to file a preservice appeal and a post service appeal, prior to filing a demand for arbitration. This is for all dates of service, from April 2017, and onward. These dates of service were after the new statute on appeals took place.*

*...In addition to the medical provider failing to file appeals prior to the filing of the demand, this demand was also filed in an improper venue. In the State of New Jersey, it is in the statute, that arbitration matters, are to be filed in the Forthright Arbitration Forum.*

The insurance policy here is clear. In Section II, Personal Injury Protection is amended to include the following provisions, Decision Point Review Pre-Certification Plan, at Part 4:

*Assignments of your right to receive benefits for medically necessary treatment or tests are prohibited except as follows:*

*At our option, benefits for medically necessary treatment or under this policy may be assigned to a health care provider who complies with the requirements of the Decision Point Review/Pre-Certification Plan and agrees that any disputed issues involving treatment or services provided to the insured must be resolved through our Internal Appeals Process prior to submitting any disputes through Forthright as per N.J.A.C. 11:3-5.*

N.J.A.C. 11:3-5 states:

## SUBCHAPTER 5. PERSONAL INJURY PROTECTION DISPUTE RESOLUTION

### *11:3-5.1 Purpose and scope*

*(a) The purpose of this subchapter is to establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance. This subchapter implements N.J.S.A. 39:6A-5.1 and 5.2, which provide that PIP disputes shall be resolved by binding alternate dispute resolution as provided in the policy form approved by the Commissioner. This subchapter also implements provisions of N.J.S.A. 2A:23A-1 et seq., as applicable to PIP dispute resolution.*

And 11:3-5.6 Conduct of PIP dispute resolution proceedings states:

*(a) A request for dispute resolution of a PIP dispute may be made by the injured party, the insured, a provider who is an assignee of PIP benefits pursuant to N.J.A.C. 11:3-4.9 or the insurer, in accordance with the terms of the policy as approved by the Commissioner. The request for dispute resolution may include a request for review by a medical review organization.*

*11:3-5.8 Medical review organizations*

*(a) Medical review organizations shall be authorized to determine in connection with the PIP dispute resolution process set forth in this subchapter:*

- 1. Whether the medical treatment or diagnostic test is medically necessary;*
- 2. Whether the treatment is in accordance with medically recognized standard protocols including those protocols approved by the Commissioner and set forth in N.J.A.C. 11:3-4;*
- 3. Whether the treatment is consistent with symptoms or diagnosis of the injury;*
- 4. Whether the injury is causally related to the accident;*
- 5. Whether the treatment is of a palliative rather than a restorative nature; and*
- 6. Whether medical procedures and tests that have been repeated are medically necessary.*

This is not merely a jurisdiction issue or one of "significant contacts." This is a venue/forum issue as well as an issue of the procedures for establishing the conditions precedent to treatment for which there is no equivalent in New York. That the EIP chose to be treated in New York and the fact that her New York treater prescribed equipment which was dispensed by a New York company is to the peril of the insured, the Assignor, and/or her providers, the Assignees.

I find that the New Jersey law of personal injury protection insurance (PIP) requires that the proper dispute resolution forum wherein providers may seek reimbursement for their treatment is Forthright Solutions.

Accordingly, the matter is dismissed in this forum, without prejudice to the Applicant from filing with Forthright Solutions in New Jersey. The peer review is moot.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY  
SS :  
County of Nassau

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

04/09/2023  
(Dated)

Bonnie Link

**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:**  
a94391824f583ad5c51328113ebda9a5

**Electronically Signed**

Your name: Bonnie Link  
Signed on: 04/09/2023