

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hector Melgar PT PC , Huntington Regional Chiropractic PC (Applicant)	AAA Case No.	17-22-1268-9613
	Applicant's File No.	2854669
	Insurer's Claim File No.	0614479860101026
- and -	NAIC No.	35882

Geico Insurance Company
(Respondent)

ARBITRATION AWARD

I, Bernadette Connor, 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

1. Hearing(s) held on 04/06/2023
Declared closed by the arbitrator on 04/06/2023

Gary Pustel, Esq. from Israel, Israel & Purdy, LLP participated virtually for the Applicant

Mohina K. Josen, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$870.23**, 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

The Assignor, a 24-year-old female, sustained injuries in a motor vehicle accident on July 1, 2021. Applicant, Hector Melgar, P.T., PC, seeks reimbursement for physical therapy provided to the Assignor July 25, 2022 through August 10, 2022; Applicant, Huntington Regional Chiropractic, P.C., seeks reimbursement for chiropractic treatment provided to the Assignor August 1, 2022 through August 10, 2022. Respondent denied payment based on IME reports dated January 28, 2022 by Milton Groelinger, D.C., and Pierce J. Ferriter, M.D.

Respondent also asserted that the insurance policy is near exhaustion.

The issues to be determined are whether the services provided to the Assignor post-IME were medically necessary and whether Respondent has demonstrated that the insurance policy is nearly exhausted.

4. Findings, Conclusions, and Basis Therefor

I have carefully reviewed the submissions contained in the Modria ADR Center maintained by the American Arbitration Association. I have also considered the oral arguments of the parties presented at the hearing of this matter.

An arbitrator "shall be the judge of the relevance and the materiality of the evidence offered, strict conformity to the rules of evidence shall not be necessary. The arbitrator may question or examine any witness or party and independently raise any issue that arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department regulations." 11 N.Y.C.R.R. 65-45 (o) (1). Additionally, as the trier of the facts and the law, an Arbitrator is authorized to review and take judicial notice of any rule, law, medical document or periodical or any other document which may impact and aid in making a decision, as long as it conforms to the Insurance laws and the New York State Insurance Department Regulations. *Matter of Medical Society v. Serio*, 100 NY2d 854, 768 NYS2d 423 (2003).

Applicant has established a prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and amount of the loss sustained, and that the payment of No-Fault benefits was overdue. See Insurance Law Section 5106a; *Mary Immaculate Hosp. v. Allstate Ins. Co.* 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; *Damadian MRI in Canarsie, P.C. v. General Assurance Company*, 2006 NY Slip Op 51048U, 2006 NYS Misc. Lexis 1363 (Decided June 2, 2006 Appellate Term, 2d Department); *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3rd 128, 784 N.Y.S. 2d 918 (2003).

To support its defense that the treatment was not medically necessary, Respondent is required to produce a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. *Healing Hands Chiropractic P.C. v. National Assurance Co.*, 5 Misc. 3d 975; *Citywide Social Work, et. al. v. Travelers Indemnity Co.*, 3 Misc. 3d 608. An insurer may use an IME report as a basis for determining whether the eligible injured person is entitled to additional treatment or other first-party benefits. See *Rowe v. Wahnaw*, 26 Misc. 3d 8, 11-12 (App. Term, 1 Dept.)

I find that Dr. Ferriter and Dr. Groelinger have set forth a clear factual basis and medical rationale for concluding that the Assignor was not in need of further treatment at the time of their examinations on January 28, 2022. See *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc. 3d 144 (A), 873 N.Y.S.2d 238, 2008 N.Y. Slip Op. 51863 (U), (App. Term 2 & 11 Dists., Sept.3, 2008). Dr. Ferriter indicated that

examination of the cervical and lumbar regions of the spine revealed no muscle spasm, no tenderness, or limitation of motion. Orthopedic tests were normal, including Spurling's test, cervical compression test, straight leg raise test, and Soto-Hall test. Neurological examination revealed no motor or sensory deficits. Dr. Ferriter also noted that examination of the shoulders and knees was normal. Dr. Groelinger noted that his chiropractic examination revealed no muscle spasm, tenderness, or limitation of motion of the cervical and lumbar regions of the spine. He also indicated that examination of the bilateral shoulders and knees were normal. Neurological examination of the upper and lower extremities revealed no motor or sensory deficits or deep tendon reflexes abnormalities.

Having found that Respondent has successfully rebutted Applicant's prima facie case of medical necessity, the burden now shifts back to Applicant to counter Respondent's consultant's findings and establish the medical necessity for the services at issue. See *Premier Health Choice P.C. v. Praetorian Ins. Co.*, 41 Misc. 3d 133 (A), 981 NYS 2d 638 (Table), 2013 N.Y. Slip Op 51802 (U); *Khodadadi Radiology v. New York Central*, 16 Misc. 3d 131 (A) (2007).

After carefully reviewing the evidence presented, I find that Applicant has met its shifted burden of proof. Hector Melgar, P.T, issued a report for a follow-up examination performed on February 7, 2022. He noted that the Assignor presented with radiating neck and back pain. Examination of the cervical spine, lumbar spine, and left shoulder revealed tenderness, muscle spasm, and limitation of motion in all planes. Mr. Melgar noted that while the Assignor continued to improve, she still had residual pain, decreased movement, and functional deficits. Upon examining the Assignor, Mr. Melgar recommended that she continue receiving physical therapy treatment. In addition to Mr. Melgar's report, Applicant relies on a report from Adalberto Morales Jr., D.C., who performed a chiropractic examination on February 7, 2022. He noted that the Assignor presented with complaints of neck pain and back pain. Chiropractic examination revealed tenderness, tightness, and trigger points of the cervical spine, lumbar spine, and thoracic spine.

Dr. Morales and Mr. Melgar's reports demonstrated that at a time contemporaneous with Dr. Ferriter's examination, the Assignor was symptomatic and in need of treatment. I therefore find that the treatment rendered post-IME was medically necessary.

Policy Limits:

An insurer is not required to pay a claim when the policy limits have been exhausted. See *Hospital for Joint Diseases v. State Farm Mut. Auto Ins. Co.*, 8 AD3d 533 (2d Dept. 2004); *Mt. Sinai Hospital v. Zurich American Ins. Co.*, 15 A.D.3d 550, 790 N.Y.S.2d 216 (2d Dept.2005). Additionally, when an insurance carrier "has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." See *Presbyterian Hosp. of the City of New York v. Liberty Mut. Ins. Co.*, 216 A.D.2d 448, 628 N.Y.S.2d 396 (2d Dept. 1995).

Moreover, an Arbitrator's award of benefits in excess of the limit of a No-Fault policy is arbitrary, capricious and constitutes grounds for vacatur of the award. See *Acuhealth*

Acupuncture, P.C. v. New York City Transit Authority, 50 Misc. 3d 1228 (A), 36 N.Y.S.3d 406, 2016 W:1044746, 2016 N.Y. Slip Op. 50297 (U)(N.Y. Sup., March, 2016).

Respondent indicated that there is only \$1,637.13 left on the insurance policy as Respondent has previously reimbursed a sum of \$48,362.87. Respondent argued that the remaining \$1,637.13 is the total sum left for reimbursement of this claim and the linked claims filed under AAA case numbers 17-22-1268-9613 and 17-22-1255-1477. Respondent maintained that any reimbursement above the remaining \$1,637.13 would improperly exceed the policy limits. In support of its assertion, Respondent submitted a Declarations Page establishing the maximum No-Fault benefits as \$50,000.00. Respondent also submitted a payment ledger.

Applicant argued that the proper amount that Respondent previously reimbursed was \$45,258.78, leaving a balance of \$4,741.22.

A review of the payment ledger shows that Applicant is correct. The ledger inexplicably lists both \$48,362.87 and \$45,258.78 as the total amounts paid. This Arbitrator's calculation of the payments listed on the ledger added up to \$45,258.78. At the hearing of this matter, Respondent uploaded a document indicating that in addition to \$45,258.78, certain bulk payments in the sum of \$3,529.69 were purportedly paid to the Law Offices of Gabriel & Moroff, P.C. However, the document does not contain any identifying information, such as the name of the Assignor, the provider, the insurer, the date of accident, the date of service, or the claim number. Respondent was given an opportunity to submit additional documentation demonstrating that the sum of \$48,362.87 was in fact reimbursed in this matter. No additional information was submitted.

I find that the amount left on the policy is \$4,741.22. Therefore, Applicant's claim is awarded 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	Status
	Hector Melgar PT PC	07/25/22 - 07/26/22	\$212.94	Awarded: \$212.94
	Hector Melgar PT PC	08/01/22 - 08/03/22	\$207.98	Awarded: \$207.98
	Hector Melgar PT PC	08/08/22 - 08/10/22	\$126.62	Awarded: \$126.62
	Huntington Regional Chiropractic PC	08/01/22 - 08/03/22	\$208.09	Awarded: \$208.09
	Huntington Regional Chiropractic PC	08/08/22 - 08/10/22	\$114.60	Awarded: \$114.60
Total			\$870.23	Awarded: \$870.23

B. The insurer shall also compute and pay the applicant interest set forth below. 10/04/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall begin to accrue as of October 4, 2022, the date the claim was received by the American Arbitration Association, until payment is made. The interest shall be two percent per month, simple, not compounded, on a pro rata basis using a 30 day month.

C. Attorney's Fees

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

As this claim was filed after 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, in accordance with 11 NYCRR 65-4.6 (d).

- 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 New York

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

04/21/2023
(Dated)

Bernadette Connor

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:
63b36e21855e14d1d59d648aca58f54c

Electronically Signed

Your name: Bernadette Connor
Signed on: 04/21/2023