

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Matrix Health Corp DBA Liberty Chemists (Applicant)	AAA Case No.	17-22-1259-1227
- and -	Applicant's File No.	157.518
Geico Insurance Company (Respondent)	Insurer's Claim File No.	0635023890101014
	NAIC No.	22055

**ARBITRATION AWARD**

I, Gary Peters, 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 04/11/2023  
Declared closed by the arbitrator on 04/11/2023

George Melanokous from Tsirelman Law Firm PLLC participated virtually for the Applicant

Tara Hardinger from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,631.80**, was AMENDED and permitted by the arbitrator at the oral hearing.

**1.** The Applicant has amended its claim and is seeking the reduced sum of \$2,105.44.

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

3. Summary of Issues in Dispute

**The Assignor was a 26 year old male who was a restrained driver of a motor vehicle and involved in an accident on 3/1/22.**

**Applicant is seeking payment for pharmaceuticals wherein the claim was denied by the Respondent for lack of medical necessity, based on its Independent Peer Review Report.**

4. Findings, Conclusions, and Basis Therefor

**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 record of the hearing and I have reviewed the documents contained therein. Any documents submitted after the hearing or at the hearing that have not been entered in the Electronic Case Folder as of the date of this award, will be listed immediately below this language and forwarded to the American Arbitration Association at the time this award is issued for inclusion.**

As stated above, the Assignor was a 26 year old male who was a restrained driver of a motor vehicle involved in an accident on 3/1/22. He was evaluated by Dr. Jean-Pierre Barakat on 4/21/22 and presented with complaints of pain in the neck, low back, left shoulder and right knee. A complete physical examination was conducted wherein it was noted there was decreased range of motion with pain. Shoulder depression and foraminal compression was positive. Lumbar exam revealed moderate tenderness at L1-S1 with increased bilateral paravertebral muscle tone, decreased range of motion with pain. Left shoulder examination revealed tenderness, decreased range of motion, right knee exam revealed decreased range of motion with a positive Lachman test. The attending physician formulated the following clinical impression: cervicalgia, sprain of joints and ligaments of the neck and low back. Recommendations were made for physical therapy, chiropractic services and acupuncture. Additionally, M.R.I.'s of the cervical/lumbar spine and right knee were recommended.

The attending physician stated that due to ongoing symptomatology on 06/03/22, a prescription for Lithodol-4.5-5% film for pain relief was recommended and dispensed by the Applicant.

**Once an Applicant establishes a prima facie showing, the burden shifts to the Respondent. Respondent's denial for lack of medical necessity must be supported by competent medical evidence setting for a clear and factual basis**

and medical rationale for denying the claim. Citywide Social Work v. Travelers Indemnity Company, 3 Misc.3d 608 (Civil Court, Kings County, 2004).

To successfully support its denial, the Respondent's Peer Review or I.M.E. Report must address all pertinent objective findings contained in the Applicant's medical submissions and set forth how and why the disputed services were inconsistent with generally accepted medical practices. The conclusory opinions of a peer reviewer, standing alone and without support of medical authorities, will not be considered sufficient to establish the absence of medical necessity (Citywide Social Work v. Travelers Indemnity Company,) Supra; Amaze Medical Supply Inc. v. Eagle Insurance Company, 2 Misc.3d 128A, 784 N.Y.S.2d 918 (App. Term 2d 11<sup>th</sup> Judicial District).

Where Respondent meets its burden, it is incumbent upon the claimant to rebut the findings and recommendations of the Respondent's reports. The insured/provider bears the burden of persuasion on the question of medical necessity. Specifically, once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, plaintiff must rebut it or succumb (Bedford Park Medical Practice, P.C. v. American Transit Insurance Company, 8 Misc.3d 1025A).

It is undisputed that the Applicant has established a prima facie case of entitlement to first party benefits by demonstrating it submitted a timely claim setting forth the fact, amount of loss sustained and that payment of the claim

**has not been made. As stated above, the burden shifts to the Respondent to set forth a clear and factual basis in medical rationale to deny the claim.**

On behalf of the Respondent, Dr. Harry Jackson reviewed multiple medical records and submitted an Independent Peer Review Report. Dr. Jackson noted that Lithodol is Lidocaine mixed with Menthol. In his opinion the Assignor had soft-tissue injuries and the standard of care would be send a patient for conservative treatment including physical therapy and all medication. There is no role for topical medications in the treatment of soft tissue injuries. He believed the Assignor would rather benefit more from oral medication such as NSAID's.

Additionally, Dr. Jackson opined that the treating physician did not provide any evidence as to why the Assignor was unable to use oral medication and why the expensive medication was chosen over the cheaper and proven effective oral medication. Furthermore, there was no evidence of malabsorption or GI problems. The Assignor did not have neuropathic pain to warrant the use of topical ointment. Lidocaine ointment is not potent and is short-acting and not medically indicated for moderate or strong pain.

Dr. Jackson noted that "the role of topical presentations, when compared to traditional routes, has not yet been fully explored and thus remains unclear".  
Reference Page #1 - Topical Preparations for Pain Relief: Efficacy and Patient Adherence - Journal of Pain Research.

Dr. Jean-Pierre Barakat submitted a Peer Review Rebuttal. He stated his findings as noted above clearly indicate that the patient had musculoskeletal and neurological injuries which warranted conservative treatment which includes pain medication. The prescription for Lidothol was prescribed for the above to enhance the effectiveness of conservative treatment.

The treating physician referenced various medical literature including "Improvement of Pain and Function After Use of Topical Pain Relieving Patch: Results of the Relief Study - Journal of Pain RES 2020". It was stated that "these results suggest that topical pain relieving patches studied were effective and safe for the relief of mild to moderate pain attributed to arthritis, neurological conditions and musculoskeletal disorders. Reductions in the interference of pain were noted as well as an overall decrease in concomitant medications. These results support the use of analgesic pain relieving patch in the first line and should be considered for future pain management guidelines.

The treating physician stated that Lidocaine has been successfully used to treat pain for many decades and has many advantages. Foremost is that Lidocaine is effective in treating acute and chronic pain and more effective in treating pain than most other agents including some opioids. Additionally, "A topical pain relief patch consisting of a local anesthetic Lidocaine and topical analgesic Menthol assists in the management of mild to moderate acute pain or mild to moderate aches. The synthesis of Lidocaine and Menthol is a highly effective combination of pain relievers working to alleviate discomfort while the root cause is being managed and treated by healthcare providers. (Lidothol Patch - Medically Reviewed by Drugs.com, December, 2019).

After reviewing all the evidence, I find the Respondent has failed to establish that the treating physician deviated from standard accepted medical practice. Clearly, there are no specific Guidelines delineating an absolute structured path for medication to be universally prescribed to all patients.

I give deference to the treating physician to decide based upon the circumstances of the injury what drugs are appropriate. The treating physician cited to multiple medical authorities to support his recommendations. Accordingly, Applicant is awarded payment in the sum of \$2,105.44.

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
	Matrix Health Corp DBA Liberty Chemists	06/03/22 - 06/03/22	\$2,631.80	\$2,105.44	Awarded: \$2,105.44
Total			\$2,631.80		Awarded: \$2,105.44

- B. The insurer shall also compute and pay the applicant interest set forth below. 07/20/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

**Interest to be 2% per month simple, not compounded on a pro rata basis using a 30 day month. Respondent shall compute and pay Applicant interest from the day of filing of arbitration to 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

**The insurer shall pay th Applicant an attorney fee in accordance with 11 NYCRR 65-4.6(d) or "As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated bt the Departmenet of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D).**

**Accordingly, the insurer shall pay the the Applicant an attorney fee in accordance with the newly promulgated 11 NYCRR 65-4.6(d). This amendment takes into account that the the maximim attorney fee has been raised from \$850.00 to \$1360.00**

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

05/10/2023  
(Dated)

Gary Peters

#### **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:**  
9c713fcb52597b01316771bb9db1caf4

### **Electronically Signed**

Your name: Gary Peters  
Signed on: 05/10/2023