

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Albert Graziosa MD  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-22-1258-1484  
Applicant's File No. 00101640  
Insurer's Claim File No. 8739345780000001  
NAIC No. 22055

### ARBITRATION AWARD

I,Carolynn Terrell-Nieves, 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 05/31/2023  
Declared closed by the arbitrator on 05/31/2023

Sasha Hochmam,Esq., from Drachman Katz, LLP participated virtually for the Applicant

Kelly Armstrong, Esq., from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$10,591.56**, 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

In dispute are the Applicant's bills for right shoulder surgery performed by the surgeon and the physician's assistant on February 22nd, 2022 as a result of injuries sustained in a motor vehicle accident on November 19th, 2021. Respondent denied the claims based on a Peer Review by Dr. Charles Ekstein dated March 16th, 2022 which found that the services were not medically necessary. The Applicant submitted a rebuttal to the peer review by Dr. Albert Graziano's. Respondent raises a fee schedule issue as well.

Respondent's peer review by Dr. Ekstein indicates according to the records, the claimant is a 41-year-old male (DOB 4/3/1981), involved in a motor vehicle accident on

11/19/2021. The claimant was the driver and wearing a restraint in a vehicle, which was struck from the rear end side. There was no report of loss of consciousness. The airbags did not deploy. There was no emergency room visit. The claimant reported headache, upper back, mid back, lower back and knee pain. The claimant had physical and acupuncture therapy treatment. The claimant had MRI of the right shoulder on 12/28/2021, MRI of the left shoulder on 12/28/2021, MRI of the thoracic spine on 12/21/2021, MRI of the cervical spine on 12/21/2021, MRI of the lumbar spine on 1/4/2022, MRI of the right knee on 1/4/2022, Infrared/video ENG note on 12/14/2021, VNG note on 12/14/2021, TCD note on 12/14/2021. The claimant had other treatments including myofascial trigger point injection on 1/13/2022, 2/17/2022.

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

The claimant was seen on 2/17/2022 by Ajin Mathew, PA. The claimant complained of right shoulder pain. Examination of the right shoulder revealed tenderness over the right bicep muscle, bicipital groove, posterior deltoid muscle, posterior glenoid rim and posterior glenohumeral joint. There was tenderness noted over the right shoulder with positive impingement. There was tenderness noted on palpation over the left deltoid muscle insertion, posterior deltoid muscle and posterior glenoid rim. ROM was decreased in all planes. There was tenderness of supraspinatus noted. Diagnoses included sprain of the right shoulder. The claimant was recommended to undergo arthroscopy of the right shoulder.

Dr. Ekstein opined that based on the medical records provided, I have come to the conclusion that the Anesthesia performed on the date of 2/22/2022 by Sedation Vacation Perioperative Medicine, PLLC was not medically necessary.

Further Dr. Ekstein opined that based on the medical records provided, I have come to the conclusion that the Brachial Plexus Block Injection, Ultrasonic guidance performed on the date of 2/22/2022 by Sedation Vacation Perioperative Medicine, PLLC was not medically necessary.

Dr. Ekstein further opined based on the medical records provided, I have come to the conclusion that the Arthroscopic rotator cuff repair, Shoulder Arthroscopy surgery, Shoulder Arthroscopy surgery performed on the date of 2/22/2022 by Empire state ASC was not medically necessary.

Dr. Ekstein opined that based on the medical records provided, I have come to the conclusion that the Nerve block injection, Ultrasound guidance performed on the date of 2/2/2022 by Sedation Vacation Perioperative Medicine, PLLC was not medically necessary.

Dr. Ekstein opined Based on the medical records provided, I have come to the conclusion that the Labrum repair, Subacromial decompression, Arthroscopic subacromial decompression, Synovectomy performed on the date of 2/22/2022 by Albert Grazioso, M.D was not medically necessary.

Dr. Ekstein opined that based on the medical records provided, I have come to the conclusion that the Nerve block injection, Ultrasonic guidance performed on the date of 2/22/2022 by Empire state ASC was not medically necessary.

Regarding the Shoulder Arthroscopy Dr. Ekstein indicated that the rotator cuff is a group of tendons that move the shoulder joint. Some people have pain in their shoulders related to wear and tear of the rotator cuff tendons. The weakening of the tendon is thought to be caused by aging and mechanical wear. Eventually, the process may result in a tear of the tendons. Rotator cuff tears can cause pain and impair arm function but asymptomatic tears also occur. For people with symptomatic tears, nonoperative management including pain medicines (simple analgesia and anti-inflammatories), glucocorticoid injections and physical therapies do not always result in satisfactory outcomes.

Assuming, arguendo, the peer review was sufficient the defense would still fail as Applicant has submitted a factually sufficient rebuttal affidavit. The rebuttal of the surgeon, Albert Graziosa, M.D., meaningfully refers to and rebuts the assertions of Dr. Ekstein. Dr. Graziosa performs a thorough breakdown of the Assignor's condition, and establishes that based upon these findings, the right shoulder surgery was medically necessary. Dr. Graziosa stated that on the basis of the patient's unrelenting pain and symptomology, MRI findings, physical examination, as well as as well as her significant lack of improvement to conservative nonsurgical treatment, which with a high degree of medical certainty is suggested for arthroscopic surgery of the right shoulder, it was determined that surgery was the best option for the present case.

Accordingly, Respondent has failed to establish either of its defenses to this bill, and Applicant is awarded the \$10,591.56 at issue.

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
	Albert Graziosa MD	02/22/22 - 02/22/22	\$10,591.56	Awarded: \$10,591.56
<b>Total</b>			<b>\$10,591.56</b>	<b>Awarded: \$10,591.56</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 07/14/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to the no-fault regulations, Applicant is awarded interest running from the above-referenced date. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a).

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee pursuant to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). In accordance with newly promulgated 11 NYCRR 65-4.6(d). "If the claim is resolved by the designated organization at any time prior to transmittal to an arbitrator and it was initially denied by the insurer or overdue, the payment of the applicant's attorney's fee by the insurer shall be limited to 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon, for each applicant with whom the respective parties have agreed and resolved dispute, subject to a maximum fee of \$1,360.

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

06/22/2023  
(Dated)

Carolynn Terrell-Nieves

**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:**  
d446eb355b5dd116597c7cb867bc7e25

**Electronically Signed**

Your name: Carolynn Terrell-Nieves  
Signed on: 06/22/2023