

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Total Anesthesia Provider, P.C. f/k/a
Advanced Anesthesiology of NY, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-22-1274-9653
Applicant's File No.	56671
Insurer's Claim File No.	0545830840101045
NAIC No.	22055

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (JB)

1. Hearing(s) held on 09/28/2023
Declared closed by the arbitrator on 09/28/2023

Aleksey Selipanov from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Elba Iris Cornier from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$496.32**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that there are no fee schedule disputes.

3. Summary of Issues in Dispute

EIP (JB), is a 46-year-old female, who was involved in a motor vehicle accident on May 26, 2022. Following the accident, EIP sought medical treatment. A lumbar epidural steroid injection is administered to EIP on July 31, 2022.

Applicant's claim for reimbursement was denied by Respondent based upon a peer review by Dilip Subhedar, M.D., dated September 9, 2022.

The issue presented: Whether Applicant is entitled to no-fault reimbursement for health services denied based on a peer review?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing. This Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. The case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

EIP (JB), is a 46-year-old female, who was involved in a motor vehicle accident on May 26, 2022. Following the accident, EIP sought medical treatment. A lumbar epidural steroid injection is administered to EIP on July 31, 2022.

It is well settled that an Applicant establishes its prima facie showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no-fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). I find Applicant establishes its prima facie case of entitlement to No-Fault compensation for its claim. The burden then shifts to the Respondent to prove that the bill in question was properly denied. I find Respondent's denial to be timely.

Applicant's claim for reimbursement was denied by Respondent based upon a peer review by Dilip Subhedar, M.D., dated September 9, 2022.

Medical Necessity

In order to support a lack of medical necessity defense, respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or

examining physician's] determination that there was a lack of medical necessity for the services rendered." See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established, shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 Slip Op 50137(U) (N.Y. City Civ. Ct. 2012.) "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, supra.

In support of its contention that the lumbar epidural steroid injection, administered on 7/31/22, was not medically necessary, Respondent basis its defense upon the peer review report by Dilip Subhedar, M.D., dated 9/9/22. Dr. Subhedar reports that the standard of care for LESI is as follows: recommended as a short term treatment for intervertebral disc herniation, degenerative changes, and/or spinal stenosis leading to radicular pain. ESIs are not recommended as a treatment for axial low back pain or for non-specific low back pain. Citing two (2) medical studies, Dr. Subhedar concludes that LESI is not recommended for non-specific low back pain, and therefore, the service provided on 7/31/22, was not medically necessary.

Every peer review requires individual scrutiny to determine whether the burden should be shifted back to the claimant to submit contrary expert proof. If the claimant can demonstrate, through references to the medical records or otherwise, that the peer review doctor's opinion lacks a sufficient basis and/or medical rationale because it is conclusory, or because it fails to address essential factual issues or is based upon disputed or apparently

incorrect facts, the insurer has fallen short of its burden of proof. Novacare Medical P.C. v. Travelers Property Casualty Ins. Co., 31 Misc.3d 1205(A), 927 N.Y.S.2d 817 (Table), 2011 N.Y. Slip Op. 50500(U) at 4, 2011 WL 1226956 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

With respect to Dr. Subhedar's peer review, I find that after such scrutiny, the burden does not shift back to Applicant to submit contrary expert proof. A review of the two articles cited by Dr. Subhedar, fail to establish a "generally accepted medical standard" regarding the services provided in this case: a lumbar epidural steroid injection. One study by Yang S, et al, established that ESI was beneficial for pain relief at short term and intermediate term follow up when compared to conservative treatment, but this effect was not maintained at long term follow up. Although this study demonstrated that successful event rates were significantly higher in patients who received ESI, than in patients who received conservative treatment, Dr. Subhedar, inexplicably cites to a study by Schneider MJ, et al, that purports to conclude that the evidence for the effectiveness of epidural injections is of low quality.

The articles cited are silent with respect to establishing a medical standard regarding administering lumbar epidural steroid injections, and fail to mention that LESI is not recommended for non-specific low back pain.

Based on the foregoing, I find that the peer review report is factually insufficient to meet the burden of persuasion. I find that the sources relied upon by Dr. Subhedar fail to set the medical standard as set forth in the peer report. I find that Respondent has not submitted sufficient evidence to establish its defense based on lack of medical necessity, and the burden does not shift to Applicant. Further, the peer review is conclusory with bald assertions which have been rejected by the Appellate Courts as insufficient to support a lack of medical necessity defense. Thus, I find that the peer review fails to establish a factual basis and medical rationale for its conclusion that the lumbar epidural steroid injection, was not medically necessary.

Accordingly, for date of service 7/31/22, Applicant is awarded the amount of \$496.32.

This decision is in full disposition of all claims for no-fault benefits presently before this arbitrator.

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
	Total Anesthesia Provider, P.C. f/k/a Advanced Anesthesiology of NY, PC	07/31/22 - 07/31/22	\$496.32	Awarded: \$496.32
Total			\$496.32	Awarded: \$496.32

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/15/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay to Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) using a 30-day month and ending

with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).

C. Attorney's Fees

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

For cases filed on or after February 4, 2015, the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon, subject to no minimum fee, and a maximum fee of \$1,360.00. 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 Nassau

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

10/03/2023
(Dated)

Nicholas Tafuri

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:
e280bd6f9adfd5f2252e56e0880200b4

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 10/03/2023