

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Galperin Medical Care PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1299-1596
Applicant's File No.	GCPC 89. 04
Insurer's Claim File No.	0495173310101026
NAIC No.	35882

ARBITRATION AWARD

I, Joshua Adler, 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

1. Hearing(s) held on 10/03/2023
Declared closed by the arbitrator on 10/03/2023

M. Lamond from Michael J. Lamond PC participated virtually for the Applicant

K. Siegel from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,050.59**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amended to \$700.39.

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

3. Summary of Issues in Dispute

The EIP claimed injuries arising from a 9/09/22 MVA.

Applicant seeks payment for rendering extracorporeal shockwave therapy ("ESWT") on 10/11/22.

Respondent denied the claim based on a peer review by J. Beer, MD, dated 12/14/22.

4. Findings, Conclusions, and Basis Therefor

EIP: male, born November 1954, initials C.M.

I have reviewed the MODRIA file maintained by the AAA. The findings set forth below are based on documents in MODRIA and arguments made at the hearing.

The EIP claimed injuries arising from a 9/09/22 MVA.

Applicant seeks payment for rendering extracorporeal shockwave therapy ("ESWT") on 10/11/22.

Respondent denied the claim based on a peer review by J. Beer, MD, dated 12/14/22.

In opposition, applicant relies on the medical record as well as a rebuttal by the treating physician, Mark Galperin, MD, dated 8/19/23.

At the threshold, I note the services rendered are presumptively medically necessary, as the applicant established its prima facie entitlement to payment by submitting the claim, setting forth the fact and the amount of loss sustained, and showing that payment was overdue (see e.g., Mary Immaculate Hospital v Allstate Insurance Co., 5 AD3d 742 [2d Dept. 2004]). Indeed, in no-fault matters, "medical necessity is established in the first instance by proof of submission of the claim form" (All County Open MRI v Travelers Insurance Co., 11 Misc3d 131 [A], 815 NYS2d 493 [App. Term 2006]).

Turning to the peer review, I find it did not refute the presumption of medical necessity which attached with transmission of the invoice. The peer reviewer stated "the available evidence does not support the effectiveness of ultrasound or shock wave for treating low back pain" (peer at 2). However, he then cited to a study which concluded that efficacy of ESWT "for lateral elbow pain" has not been "confirmed nor entirely excluded" (peer at 3) (emphasis supplied). Another "systematic review" cited by the peer reviewer supported that ESWT "is a safe and effective modality in soft tissue diseases of the upper limb," albeit noting - curiously - that "a major limitation of the study was the inclusion of studies of any level of evidence" (peer at 3) (emphasis added). Another "recent systematic review of general shock wave therapies" was cited for the proposition that "mixed evidence" existed for ESWT "for lateral epicondylitis" (peer at 3) (emphasis added).

I find that the above statements do not definitively establish - by a preponderance of the evidence - that ESWT is ineffective. Indeed, per the studies cited in the peer review, it would appear that efficacy of the subject treatment cannot be "entirely excluded;" that there is some support for it being a "safe and effective modality," albeit based on "mixed evidence." Furthermore, in the rebuttal, sources supporting efficacy of ESWT for musculoskeletal disorders are discussed. Respondent offers no reason to wholly discredit such sources. Based on the specific proofs presented in this particular matter, my

conclusion is that the "jury is still out" with respect to whether ESWT is effective, rather than definitively asserting that the treatment doesn't work. The issue is the subject of legitimate debate. On this record, I reject respondent's reliance on the peer review.

Award for the applicant.

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
	Galperin Medical Care PC	10/11/22 - 10/11/22	\$1,050.59	\$700.39	Awarded: \$700.39
Total			\$1,050.59		Awarded: \$700.39

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/11/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay the applicant interest computed from 5/11/23, the date on which the AR-1 was first received by the American Arbitration Association, at a rate of 2% per month, simple, and ending with the date of the payment of the award, subject to the provisions of 11 NYCRR 65-3.9.

C. Attorney's Fees

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

This matter was filed with the AAA after February 4, 2015. Thus, the insurer shall pay the applicant an attorney's fee 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 Nassau

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

10/26/2023
(Dated)

Joshua Adler

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:
8c15b442a5e5eb3c5c9cabdf2bbcba99

Electronically Signed

Your name: Joshua Adler
Signed on: 10/26/2023