

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Timothy D Groth, MD
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1300-3365
Applicant's File No.	GROTH-280
Insurer's Claim File No.	0515517300101022
NAIC No.	35882

ARBITRATION AWARD

I, Debbie Kotin Insdorf, 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 10/31/2023
Declared closed by the arbitrator on 10/31/2023

Maria Dudley from Rosado, Apat & Dudley, LLP participated virtually for the Applicant

Chad Meyers from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$647.80**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The billed amount is in accordance with the fee schedule.

3. Summary of Issues in Dispute

The Applicant is seeking reimbursement for shockwave therapy performed 3/16/23, following a motor vehicle accident on 11/29/21 involving Assignor EF. The Respondent issued a timely denial based on the findings of an Independent Medical Examination performed by Dr. Bo Headlam on 2/09/23.

4. Findings, Conclusions, and Basis Therefor

The Applicant's claim is for \$647.80 for shockwave therapy performed 3/16/23.

The Respondent issued a timely denial based on the findings of an Independent Medical Examination performed 2/09/23. Benefits terminated 2/25/23.

On 2/09/23, an Independent Pain Medicine Examination was performed. Dr. Bo Headlam wrote, "... states that she was involved in a motor vehicle accident on November 29, 2021. She explained that she was a restrained driver of an automobile which was evidently struck from the rear while stopped at a red light. The claimant sustained reported injuries to the neck and left shoulder. There were no reported lacerations or a claimed loss of consciousness. She went to Stony Brook University Hospital Emergency Room on November 29, 2021, via ambulance, where she was treated, and released the same day... Subsequently, the claimant was prescribed physical therapy. She is no longer receiving physical therapy. She reports that she is still receiving RPW."

The twenty eight year old Assignor complained to Dr. Headlam of headaches and pain in the neck and left shoulder.

Dr. Headlam did not note any positive objective findings. His diagnoses were resolved left shoulder sprain/strain and resolved cervical, thoracic and lumbar sprains/strains.

Dr. Headlam concluded there were no objective findings to substantiate these complaints. He found no further physical therapy or pain medicine treatment was medically necessary. There was no need for injections, prescription medication, massage therapy, diagnostic testing or durable medical equipment.

In an action to recover assigned first-party no-fault benefits, an Applicant establishes a "prima facie showing of their entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue." Mary Immaculate Hospital v. Allstate Insurance Company, 5 AD3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

Once Applicant has established a prima facie case the burden is on the insurer to prove that the medical treatment was medically unnecessary. See, Citywide Social Work & Psychological Services, PLLC a/a/o Gloria Zhune v. Allstate Ins. Co., 8 Misc.3d 1025A, 806 N.Y.S.2d 444 (App Term 1st Dept 2005); A.B. Medical Services, PLLC v. Geico Ins. Co., 2 Misc 3d 26, 773 N.Y.S.2d 773 (App Term, 2nd & 11th Jud Dist 2003); Fifth Ave. Pain Control Center a/a/o Gladys Quintero v. Allstate Ins. Co., 196 Misc.2d 801, 766 N.Y.S. 2d 748 (Civ. Ct. Queens Co. 2003). "A denial premised on lack of medical necessity must be supported by competent evidence such as an independent medical

examination, peer review or other proof which sets forth a factual basis and medical rationale for denying the claim." Healing Hands Chiropractic, P.C. a/a/o Cleeford Franklin v. Nationwide Assurance Company, 5 Misc.3d 975, 787 N.Y.S. 645, (Civ. Ct NY Co. 2004). Restated, the evidence must at least show that the services were inconsistent with generally accepted medical/professional practice. Once the generally accepted medical practice (the medical rationale) is articulated, the expert must apply the facts of the case and only then may she properly conclude the services in issue were not medically necessary due to the provider's violation of the generally accepted medical standards.

On 3/16/23, approximately one month after the Independent Medical Examination, a follow up exam was performed. NP Bibi Narain noted the Assignor complained of radiating neck pain. There were physical therapy treatments from 12/21/21 to 4/22/22 but with modest relief. The examination of the cervical spine revealed tenderness and pain with range of motion. The NP's diagnoses included cervical strain/myofascial pain and cervical facet arthropathy. The NP recommended Radial Pressure Wave Procedure (shockwave therapy).

Dr. Headlam included the results of the MRI of the cervical spine performed 9/30/22 in his list of records reviewed. He provided the Impression: "Straightening of the cervical lordosis. At C3-4; Central disc herniation impinging upon the ventral thecal sac. There is no neural foraminal narrowing. At C4/5: Central disc herniation impinging upon the ventral thecal sac. There is no neural foraminal narrowing." Dr. Headlam didn't comment on the results in his "Discussion".

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association and considering the arguments set forth by both sides, I find that Applicant's medical records and specifically the examination by NP Narain on 3/16/23 and MRI results revealed Assignor continued to be symptomatic and she required further treatment after the effective cut-off date. The Applicant's evidence was sufficient to refute the findings of Independent Medical Examiner Headlam.

Accordingly, the Respondent's denial cannot be upheld. The Applicant is awarded \$647.80.

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
	Timothy D Groth, MD	03/16/23 - 03/16/23	\$647.80	Awarded: \$647.80
Total			\$647.80	Awarded: \$647.80

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/19/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after Apr.5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). If an applicant does not request arbitration or institute a lawsuit within 30 days after receipt of a denial of claim form or from the payment of benefits, interest shall not accumulate on the disputed claim or element until such action is taken. 11 NYCRR 65-3.9(c). In accordance with 11 NYCRR 65-3.9 (c), interest shall be paid on the claim (s), totaling \$647.80 from 5/19/23, the date the arbitration was commenced.

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). The insurer shall pay the applicant an attorney's fee, in accordance with 65-4.6(d). This amendment takes into account that there is an attorney fee of 20% of benefits plus interest with no minimum fee and a maximum attorney fee of \$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 New York

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

11/16/2023

(Dated)

Debbie Kotin Insdorf

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:
3abd83e231d468da845aaea176272b72

Electronically Signed

Your name: Debbie Kotin Insdorf
Signed on: 11/16/2023