

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Q Pharmacy Rx, Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1292-6665
Applicant's File No.	2944761
Insurer's Claim File No.	8735278830000003
NAIC No.	35882

ARBITRATION AWARD

I, Camille 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: Eligible Injured Person (JW)

1. Hearing(s) held on 11/13/2023
Declared closed by the arbitrator on 11/13/2023

Scott Fisher from Israel Purdy, LLP participated virtually for the Applicant

Caroline Glover from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$970.40**, 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

Applicant seeks reimbursement for medication provided on 1/24/23 following a motor vehicle accident on 1/7/23. The charges were timely denied based on a peer review by Dr. Tawfello dated 3/10/23 based on lack of medical necessity. A rebuttal is submitted by Dr. Perez.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for medication provided on 1/24/23 following a motor vehicle accident on 1/7/23. The charges were timely denied based on a peer review by Dr. Tawfellos dated 3/10/23 based on lack of medical necessity.

The EIP is a 30 year old restrained male driver involved in a rear impact who did not go to an ER and began conservative treatment for neck, back and shoulder pain. A 1/17/23 note indicates the EIP complained of radiating low back pain with numbness and tingling in the feet/toes, radiating neck pain and right shoulder pain. MRI of the left shoulder reported partial tear of the SC tendon, fluid in the biceps tendon, impingement of the rotator cuff and OA changes.

On exam there were decreased ranges of motion in the cervical and lumbar spine, tenderness, spasm and positive orthopedic tests. There was positive impingement in the right shoulder. Therapy was recommended.

Lidothol film and cyclobenzaprine was prescribed.

The peer found the cyclobenzaprine to be medically necessary and it was paid but the Lidothol film was medically unnecessary and was denied.

The peer states the Lidothol was unnecessary here given that it is indicated for neuropathic pain and peripheral neuropathy. It is also indicated for post-herpetic neuralgia and allodynia none of which were diagnosed in this patient.

Citations are provided for these statements.

I find the peer adequate to demonstrate factually and medically that the Lidothol was medically unnecessary shifting the burden to applicant.

Applicant submits a late rebuttal to which respondent objects but which was accepted by the Arbitrator in her discretion as it was submitted in July 2023 which was sufficient time in which to perform an Addendum if desired. A request for a continuance for an Addendum was denied.

The 1/17/23 report is submitted which also notes diminished sensation at C5, 6 and L4,5, diminished reflexes at BR, biceps, Patella and Achilles and decreased motor strength (4/5). The diagnosis was cervicalgia, disc displacement, radiculopathy and adhesive capsulitis of the right shoulder.

The rebuttal is by Dr. Perez who states that Lidothol is not only used for neuropathic pain but is commonly used in the treatment of back pain, citing to an article regarding chronic back pain. Such use is in addition to uses for post-herpetic neuralgia, peripheral neuropathy and post-surgical pain.

Another article also cited indicates it may be used where traditional NSAIDs provide partial relief or are associated with GI difficulties or interact with other medications.

The rebuttal contends the lidocaine may be an alternative to such medications and is appropriately used under these circumstances for analgesia for other than neuropathic pain.

I find the peer adequate to demonstrate factually and medically that Lidothol was medically unnecessary shifting the burden to applicant.

I find the rebuttal adequate to rebut the peer and demonstrate Lidothol was indicated in this setting of radiating pain with numbness and tingling and neurologic deficits which may qualify as neuropathic pain.

Regardless, the rebuttal establishes that it is acceptable to use Lidocaine topically under these circumstances for low back pain and osteoarthritis which was also diagnosed by the PA.

The peer did not adequately explain the standard of care for these injuries nor did he discuss the use of NSAIDs but limited his discussion to Lidocaine film and the rebuttal adequately demonstrated that it may be used in this setting.

For all the forgoing reasons the charges are awarded.

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
	Q Pharmacy Rx, Inc	01/24/23 - 01/24/23	\$970.40	Awarded: \$970.40
Total			\$970.40	Awarded: \$970.40

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the date of filing at a rate of 2% per month, simple, ending with 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

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject to a maximum 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 FL

SS :

County of Osceola

I, Camille 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.

11/19/2023

(Dated)

Camille 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:
4290bf32c30e9aa9a589f502aa7fbfbe

Electronically Signed

Your name: Camille Nieves
Signed on: 11/19/2023