

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.	17-23-1293-0578
Applicant's File No.	2938739
Insurer's Claim File No.	8730520740000003
NAIC No.	22055

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 (CB)

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, **\$1,893.00**, 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 (diclofenac gel) provided on 1/13/23 following a motor vehicle accident on 7/25/22. The charges were timely denied based on a peer review by Dr. Beer dated 3/3/23 based on lack of medical necessity. A rebuttal is submitted by Dr. Perez.

4. Findings, Conclusions, and Basis Therefor

Applicant seeks reimbursement for medication (diclofenac gel) provided on 1/13/23 following a motor vehicle accident on 7/25/22. The charges were timely denied based on a peer review by Dr. Beer dated 3/3/23 based on lack of medical necessity.

The peer reviewed the pertinent records and states the EIP was a 45 year old restrained female driver hit in the rear who was treated in an ER and released. She began conservative treatments for neck, back, shoulder, hip and knee pain. On 9/15/22 on exam there was tenderness, decreased range of motion and 4/5 motor strength. The EIP underwent epidural injection on 1/25/23 and right knee surgery on 2/2/23.

The peer states the diclofenac gel provided on 1/13/23 was medically unnecessary based on the injuries which were musculoskeletal in nature and which are treated with conservative treatments and medication.

The prescribed gel is a deviation from standards of care as this was a case of diffuse pain which is not effectively treated with a topical and localized gel. Such medications are primarily recommended for neuropathic pain when trials of other medications have failed.

In this setting, topical NSAIDs are recommended if there is a risk of GI complication. Otherwise, oral NSAIDs are the standard for pain in multiple areas of the body such as here.

This gel is not FDA approved for pain or MS injuries and is used for actinic keratosis.

I find the peer adequate to demonstrate factually and medically that the gel 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 rebuttal is by Dr. Perez who states the medication was used "off label" which is acceptable and that it

is not only used for neuropathic pain but is commonly used in the treatment of back pain. Such use is in addition to FDA-approved uses.

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 medication 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 diclofenac gel was medically unnecessary shifting the burden to applicant.

I find the rebuttal inadequate to rebut the peer and demonstrate diclofenac gel was indicated in this setting of musculoskeletal pain in the neck, back, knees, shoulders and hips without radiating pain or numbness and tingling or neurologic deficits which qualify as neuropathic pain.

Regardless, the rebuttal fails to address the fact that a gel would not be effective analgesia for so many different areas that a patient would have to lather it all over the body to be effective whereas, oral NSAIDs treat the entire system and all areas of pain and inflammation in the absence of any GI complications. Oral NSAIDs still constitute the standard of care in this setting and the rebuttal fails to establish that it is acceptable to use a gel topically under these circumstances for neck, low back, shoulder, knee and hip pain.

The evidence is more consistent with the peer than the rebuttal in proving this gel was not consistent with standards of care in this setting and lack of medical necessity.

The denial is sustained.

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 claim is DENIED in its entirety

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.

11/20/2023
(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:
93a3e1f5a8f6d48c2d30c5bb9e038cd8

Electronically Signed

Your name: Camille Nieves
Signed on: 11/20/2023