

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Kayal Medical Group, LLC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-22-1264-5909
Applicant's File No.	3115174
Insurer's Claim File No.	0390734810101018
NAIC No.	35882

### ARBITRATION AWARD

I, Elyse Balzer, 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: AO'B

1. Hearing(s) held on 10/23/2023  
Declared closed by the arbitrator on 10/23/2023

Melissa Scotti, Esq from Law Offices of Andrew J. Costella Jr., Esq. participated virtually for the Applicant

Jerry Marino from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,450.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing applicant amended the claim to \$597.87 as per the NY fee schedule

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

3. Summary of Issues in Dispute

This arbitration is based on three bills for office visits & knee injections performed by a physician assistant on 1/17/22, 2/4/22 and 3/18/22 on the 18-year-old female eligible injured person AO'B for injuries sustained as a back seat passenger in a motor vehicle involved in an accident on 1/23/21.

The issue is:

Has respondent proven the lack of medical necessity of office visits & knee injections based on an IME performed on 6/21/21 by Dr. Steven Renzoni, MD?

The parties agreed that the above issues were the only issues in contention.

Respondent did not raise any issue of exhaustion.

All of the documents contained in the electronic case folder (ECF) for this case, maintained by Modria for the AAA, were reviewed.

The arbitration hearing was conducted via Zoom, as all arbitration hearings have been conducted telephonically since March 15, 2020 and via Zoom since February 2021 due to the COVID-19 pandemic.

#### 4. Findings, Conclusions, and Basis Therefor

Applicant seeks payment for office visits & knee injections performed by a physician assistant on 1/17/22, 2/4/22 and 3/18/22 on AO'B.

Respondent timely denied applicant's claims based on the orthopedic IME conducted on 6/21/21 by Dr. Steven Renzoni, MD.

Dr. Renzoni took an accident and treatment history, reviewed past medical history, reviewed medical records and received AO'B's complaints of pain in the head, neck, low back & both knees. AO'B reported that "her overall symptoms have improved compared to the reported date of injury."

The results of the IME were negative, showing a negative Spurling's, SLR, McMurray, anterior/posterior drawer, Lachman's, alignment tests, no muscle spasm or tenderness in the cervical spine & lumbar spine, full range of motion in the spine & knees, full muscle strength, normal sensation, and normal reflexes.

Dr. Renzoni concluded that AO'B had resolved sprains & strains of the cervical spine, lumbar spine and both knees. Dr. Renzoni found no further need for treatment, such as orthopedic treatment, physical therapy, massage therapy, injections, surgery, DME, diagnostic testing, prescription medication, special transportation or household help.

Applicant did not present a rebuttal or letter of medical necessity to support its claim.

Applicant presented medical records. The records include a report of an exam in March 2021, which was approximately 16 months before the IME and does not serve to refute or rebut the IME findings and opinion.

The Appellate Term, 2<sup>nd</sup> Department has held that an affirmed independent medical examination report, which sets forth a factual basis and medical rationale for the conclusion that there was a lack of medical necessity, establishes a prima facie case for defendant. *Viviane Etienne Medical Care PC v. Geico General Ins. Co.*, 2010-2853 KC, NYLJ 1202589474972 (App Tm, 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Dists, 2013).

In *Amato v. State Farm Ins. Co.*, 2013 NY Slip Op 51113 (2d Dep't 2013), the Appellate Division, 2<sup>nd</sup> Department reversed a lower court holding about a lack of medical necessity defense based on a negative IME.

The Appellate Division held:

In this action by a provider to recover assigned first-party no-fault benefits for chiropractic services rendered to plaintiff's assignor's spine, the District Court, in a decision after a nonjury trial, found for plaintiff, stating that defendant had failed to prove a factual basis or medical rationale for defendant's determination that the services at issue were not medically necessary. A judgment awarding plaintiff the principal sum of \$1,920.90 was entered pursuant to the decision.

Prior to the trial, the parties stipulated that plaintiff had timely submitted its claim forms to defendant, that defendant had timely denied the claims and that the only issue for trial was the medical necessity of the services. The proof at trial showed that defendant had denied plaintiff's claims on the ground of lack of medical necessity based upon an independent medical examination (IME) of the assignor's spine. It is undisputed that the IME had been conducted on September 8, 2005 and that the services at issue had been provided from January 3, 2006 to January 30, 2007. Defendant's IME chiropractor testified that there was a lack of medical necessity for the chiropractic treatment at issue, which had been rendered after the IME, because, at the time of the IME, plaintiff's assignor had reached "status quo ante." Contrary to the holding

of the District Court, after defendant made such a showing, plaintiff bore the burden of demonstrating, by a preponderance of the credible evidence, that the treatment at issue was medically necessary. Since plaintiff proffered no evidence, a finding that the assignor's condition had worsened after the IME would be speculative, at best.

Accordingly, the judgment is reversed and the matter is remitted to the District Court for the entry of judgment in favor of defendant dismissing the complaint (*see Cohen v Hallmark Cards*, 45 NY2d 493 [1978]; *Specialty Surgical Servs. v Travelers Ins. Co.*, 27 Misc 3d 134 [A], 2010 NY Slip Op 50715[U] [App Term, 9th & 10th Jud Dists 2010]; *S.J. Pahng, M.D., P.C. v Progressive Northeastern Ins. Co.*, 20 Misc 3d 137[A], 2008 NY Slip Op 51537[U] [App Term, 2d & 11th Jud Dists 2008]).

Applicant did not present any direct rebuttal to the IME findings and conclusion.

Applicant did not present any proof of any physical exam, conducted by a treating health provider, at or about the time the IME was held which would serve to contradict the IME findings and conclusions. In short, applicant did not present any proof which would refute or rebut the IME findings and conclusions. See, e.g. *Delta Diagnostic Radiology PC v. New York Cent. Mut. Fire Ins. Co.*, 2012 NY Slip Op 51953(U)(App Tm, 2<sup>nd</sup> Dep't 10/16/12).

Once a defendant makes out a prima facie case that services were not medically necessary, the burden shifts to plaintiff to establish the existence of a triable issue of fact. *I & B Surgical Supply aao Jean Elie v NY Central Mut. Fire Ins. Co.*, 16 Misc.3d 4 (App Tm, 2<sup>nd</sup> & 11<sup>th</sup> Jud Dists, 2007).

Applicant has failed to refute the opinion of respondent's expert and has failed to produce any rebuttal evidence to prove medical necessity for the services rendered. *Citywide Social Work & Psy Serv PLLC v. Allstate Ins. Co.*, 20 Misc.3d 1124(A), 2008 NY Slip Op 51601(U) (Dist Ct, Nassau Co 2008); see also, *Delta Diagnostic Radiology, P.C. v. American Tr. Ins. Co.*, 2007 NY Slip Op 52455(U), 18 Misc.3d 128(A)(App Tm, 2<sup>nd</sup> Dep't 2007); *Delta Diagnostic Radiology PC v. Progressive Cas. Ins. Co.*, 2008 NY Slip 52450(U)(App Tm, 2<sup>nd</sup> & 11<sup>th</sup> Jud Dists 2008).

Based on the proof, I find that respondent has proven the lack of medical necessity, by a fair preponderance of the credible evidence, of the services listed above, and that applicant has failed to rebut or refute respondent's showing.

Applicant's claim is denied.

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 NY

SS :

County of Westchester

I, Elyse Balzer, 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)

Elyse Balzer

**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:**  
f7801e52e6e8c891c85fac2d5cde0777

**Electronically Signed**

Your name: Elyse Balzer  
Signed on: 11/20/2023