

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

ESM Rehab PT, PC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-22-1275-6370
Applicant's File No.	FDNY22-60392
Insurer's Claim File No.	0656964340000002
NAIC No.	22055

**ARBITRATION AWARD**

I, Robyn McAllister, 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 11/30/2023  
Declared closed by the arbitrator on 11/30/2023

Melissa Pirillo, Esq. from Fass & D'Agostino, P.C. participated virtually for the Applicant

Jaime Drantch, Claims Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,576.95**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant withdrew with prejudice as paid its claim for all pre-IME cut-off dates of service and reduced its claim to comply with the Fee Schedule. The new amount claimed is \$835.08.

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

3. Summary of Issues in Dispute

Whether Respondent properly denied Applicant's claim for performing physical therapy treatments for Assignor (DRV), a 32 year-old female driver, in connection with

treatment of injuries sustained in a motor vehicle accident on December 23, 2021, based on an Independent Medical Examination by Dr. Aruna Seneviratne.

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

Applicant sought reimbursement in the amount of \$835.08 for performing physical therapy treatments from April 28, 2022 to May 21, 2022 for Assignor (DRV), a 32 year-old female driver, in connection with treatment of injuries sustained in a motor vehicle accident on December 23, 2021. Respondent timely denied Applicant's claim predicated on an Independent Medical Examination ("IME") on April 14, 2022 by Dr. Aruna Seneviratne.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. Applicant established its prima facie case since Respondent's denials acknowledged receipt of Applicant's bills. *See Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498 (2015); *AR Medical Rehabilitation v State-Wide Insurance Company*, 49 Misc.3d 919 (Civil Ct., Kings Co. 2015).

At the hearing, Respondent argued that it properly denied Applicant's claim since the services rendered were not medically necessary. I agree. I was persuaded by the IME report by Dr. Seneviratne, submitted by Respondent in support of its denials.

Dr. Seneviratne examined Assignor on April 14, 2022. According to Dr. Seneviratne, Assignor reported being employed as a "representative" that she missed two weeks of work as a result of the accident. Assignor stated that she was working full time at the time of the IME. Dr. Seneviratne noted that while Assignor made subjective complaints of pain in the neck, mid and lower back and headaches, there were no objective signs of injury. Although Dr. Seneviratne noted "minimal tenderness" in the lumbar spine, it was not accompanied by spasms or reductions in ranges of motion. Dr. Seneviratne concluded that Assignor had sustained "sprains" of the cervical, thoracic and lumbar spine and "sprains-strains" of the bilateral shoulders, all of which had "resolved." Dr. Seneviratne opined that Assignor had no orthopedic disability and that no further treatment including physical therapy was necessary. Based on the IME findings, Respondent terminated Assignor's benefits effective April 28, 2022.

I find that Dr. Seneviratne's IME report was sufficient to support Respondent's defense of lack of medical necessity. Thus, the burden shifted to Applicant to demonstrate medical necessity. *See .A. Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131 (A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2d & 11<sup>th</sup> Dist. 2007); *West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co.*, 13 Misc.3d 131 (A), 2006 N.Y. Slip Op. 51871(U) (App. Term 2d & 11<sup>th</sup> Dist. 2006).

In support of its claim, Applicant submitted the documents contained in the ADR Center including PT referrals by Dr. John Greco, Dr. Francisco Valderrama and Inna Kim, NP, initial PT evaluation and treatment notes. I was not persuaded by the medical evidence that the physical therapy was warranted beyond the IME cut-off date.

Applicant did not submit any examination reports that were contemporaneous with the IME. The PT referrals did not indicate any objective examination findings and the initial PT evaluation was performed on January 11, 2022, more than four months prior to the IME. The physical therapy treatment notes were generic and insufficient to refute Dr. Seneviratne's detailed and thorough examination findings. Therefore, I find that Applicant failed to satisfy its burden and I find that Respondent properly denied Applicant's claim.

Finally, while Applicant argued at the hearing that there were linked cases heard by this Arbitrator wherein there may have been examination reports from other providers that were contemporaneous with the IME, a review of those cases revealed no medical reports that refuted Dr. Seneviratne's IME findings.

Accordingly, Applicant's claim is denied in its entirety.

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

12/03/2023

(Dated)

Robyn McAllister

### **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:**  
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### **Electronically Signed**

Your name: Robyn McAllister  
Signed on: 12/03/2023