

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Family RX Corp.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-23-1296-0673 |
| Applicant's File No. | N/A |
| Insurer's Claim File No. | 8766106090000001 |
| NAIC No. | 22055 |

ARBITRATION AWARD

I, Lori Ehrlich, 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: Claimant

1. Hearing(s) held on 11/14/2023
Declared closed by the arbitrator on 11/14/2023

Ian Besso, Esq. from The Sigalov Firm PLLC participated virtually for the Applicant

Iqra Shah, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,950.53**, was AMENDED and permitted by the arbitrator at the oral hearing.

Amended to \$1528.72

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

3. Summary of Issues in Dispute

In dispute is Applicant's claim in the sum of \$1,528.72 for Lidocaine ointment furnished to Applicant's Assignor, G.N., a fifty-two-year-old male, said claim arising from an automobile accident on July 6, 2022.

Respondent has denied this claim based on the peer review of Dr. Shruti Patel dated October 14, 2022, and Applicant relies on a rebuttal from Dr. Leonid Shapiro dated March 25, 2023. The issue presented is one of medical necessity.

The parties appeared via Zoom.

I have reviewed the documents entered into the ADR by November 14, 2023.

4. Findings, Conclusions, and Basis Therefor

The prescription at issue was provided to the Claimant on August 29, 2022. Applicant has set forth a prima facie case for the claim at issue by the submission of a completed health claim form documenting the fact and amount of the loss sustained (Amaze Medical Supply v. Eagle Ins. Co., 2 misc. 3d 128A, 784NYS 2d 918, 2003 NY Slip Op.517014 [App Term, 2d & 11th Jud. Dusts]. Upon proof of a prima facie case by the Applicant, the burden now shifts to the insurer to prove that the services at issue were not medically necessary. (see Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co., 3 Misc. 3d 608, 2004 NY Slip Op 24034 [Civ. Ct., Kings County 2004]).

When considering the medical necessity of the Lidocaine Ointment at issue, Dr. Patel acknowledges that pain is among the most debilitating symptoms but highlights the importance of differentiating between nociceptive and neuropathic pain. Dr. Patel maintains that all types of pain should initially be treated with nonpharmacologic therapy but if pain persists then pharmacologic therapy may be utilized. Dr. Patel concludes, "Reviewing the literature and studies. lidocaine is recommended as a treatment for neuropathic pain, however in acute pain, studies have shown that it has no added benefit. Standard of care remains to initiate non pharmacologic therapy. and NSAID, and if neuropathic pain is of concern, then consider SNRI or tricyclic antidepressant prior to reaching for lidocaine. As per the most recent office visit note provided for my review by Vyacheslav Gulkarov, NP. and Herschel Kotkes, MD. dated 08/24/2022 claimant continues to complain of pain in the neck and low back. Examination of the cervical spine revealed tenderness to palpation and decreased ROM with pain. Palpable trigger points in the head and neck muscles. Positive compression test. Examination of the lumbar spine revealed pain and decreased ROM with pain. Positive Kemps Test. Reviewing the documents provided, there is no indication of positive findings of neuropathy on physical exam. The management described does not follow standard of care in that there is no notation that claimant has failed physical therapy and NSAID therapy and hence requiring second- and third-line treatment. Therefore, topical lidocaine 5% ointment would not be appropriate or not medically necessary in this case."

I find has effectively rebutted the presumption of medical necessity established by the Applicant. Then peer review sets forth sufficient factual foundations and medical rationale upon which his conclusions are based. As such, the burden shifts to the Applicant to refute the Respondent's evidence (see Expo Medical Supplies Inc. v. Claredon Ins. Co., 2006 NY Slip Op 50892(u)).

In his Dr. Shapiro, a non-treating physician, concludes that the Claimant was in need of this medication for the treatment of his injuries. In response to the peer review Dr. Shapiro notes Lidocaine is a common local anesthetic that relieves itching, burning, and pain, and that topically, it blocks both initiation and conduction of nerve impulses by decreasing ionic flux through the neuronal membrane. He further asserts that because the penetrates the skin, it creates an anesthetic effect by not just preventing pain signals from propagating to the brain but by stopping them before they begin. Dr. Shapiro states, "Topical lidocaine for therapy of both neuropathic and non-neuropathic pain was concluded "to be an effective and safe option for add-on therapy" He further notes that while topical application may be the only option for patients who are unable to tolerate oral medication, there is no established medical standard that people who are able to tolerate oral medication should not be given topical medication. Dr. Shapiro maintains that the advantage of topical medication is that it prevents adverse effects before they start.

Upon careful review of the evidence presented I find that that the rebuttal in conjunction with the medical records and test results submitted refutes Respondent's contentions and successfully establishes that the medication was medically necessary. Based on the foregoing, Applicant is awarded \$1,528.72.

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 | Amount Amended | Status |
|---------|-----------------|---------------------|--------------|----------------|--------------------------|
| | Family RX Corp. | 08/29/22 - 08/29/22 | \$1,904.65 | \$1,528.72 | Awarded: \$1,528.72 |
| | Family RX Corp. | 08/29/22 - 08/29/22 | \$37.78 | \$0.00 | Withdrawn with prejudice |
| | Family RX Corp. | 08/29/22 - 08/29/22 | \$8.10 | \$0.00 | Withdrawn with prejudice |
| Total | | | \$1,950.53 | | Awarded: \$1,528.72 |

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/20/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Insurer shall pay interest at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month. Interest shall be computed from April 20, 2023 to the date of payment.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00. However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Westchestser

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

12/08/2023

(Dated)

Lori Ehrlich

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:
88d3e86fc6fd21c0ddc1bf19ef7539a4

Electronically Signed

Your name: Lori Ehrlich
Signed on: 12/08/2023