

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Galperin Medical Care PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1299-0483
Applicant's File No.	GCPC 123.02, 03
Insurer's Claim File No.	8711138230000001
NAIC No.	35882

ARBITRATION AWARD

I, Alina Shafranov, 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 12/06/2023
Declared closed by the arbitrator on 12/06/2023

Michael Lamond, Esq. from Michael J. Lamond PC participated virtually for the
Applicant

John Rovere, Esq. from Geico Insurance Company participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$1,400.78**, 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

The Assignor, "CC", an 38-year-old female was involved in a motor vehicle accident as a driver on September 25, 2022. The Assignor sought medical treatment for her injuries sustained in the MVA, and eventually came under the care of Mark Galperin, M.D. Applicant seeks reimbursement for shockwave therapy for dates of service 10/10/22-10/17/22. Respondent timely denied reimbursement for the claim based upon the peer review reports by Dilip Subhedar, M.D. dated 12/12/22 and 12/14/22. As Applicant's claim properly reflects the New York Workers' Compensation Medical Fee Schedule (fee schedule), the only issue to be decided is whether the services were medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. This hearing was conducted remotely on the Zoom platform. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

I find that Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). Respondent's denials are found to be timely.

The civil courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted medical practice as a medical rationale for his findings; and 3) the peer review report fails to provide specifics as to the claim at issue, is conclusory or vague. See generally, Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005).

In support of its contention the extracorporeal shockwave therapy was not medically necessary Respondent relies upon the peer review reports of Dilip Subhedar, M.D. dated 12/12/14 and 12/14/22. In the peer review reports Dr. Subhedar asserted that the medical records fail to support the medical necessity for the extracorporeal shockwave therapy. He stated that the extracorporeal shockwave therapy is not recommended for any form of back pain or neck pain due to inadequate evidence. Dr. Subhedar stated that in the absence of evidence, the clinical use of this form of treatment is not justified.

In opposition to the peer review reports of Dr. Subhedar, Applicant offers a Rebuttal by Mark Galperin, M.D. also submitted are numerous medical records. In his Rebuttal Dr. Galperin disputes some of the assertions made by the peer doctor, and states that the Assignor presented with complaints of pain in the cervical, thoracic, and lumbar spine regions. He stated that the Assignor was recommended for physical and chiropractic therapy and was also referred for extracorporeal shockwave therapy in order to return her to pre-injury status.

I am persuaded by the overall review of the Assignor's medical records that the extracorporeal shockwave therapy was in fact medically necessary in this case. The testing was recommended based on the severity of the Assignor's injury in order to relieve her pain and promote healing. Therefore, deference is afforded to the judgment of the treating physician who determined that the therapy was needed to obtain information about Assignor's injuries and customize the treatment plan. Comparing the relevant evidence presented by both parties against each other and the above referenced medical

necessity standard, I find that the medical records are sufficient to rebut the peer review report. Accordingly, Applicant is entitled to reimbursement.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant.

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
	Galperin Medical Care PC	10/10/22 - 10/10/22	\$700.39	Awarded: \$700.39
	Galperin Medical Care PC	10/17/22 - 10/17/22	\$700.39	Awarded: \$700.39
Total			\$1,400.78	Awarded: \$1,400.78

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/10/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Based on the submission of a timely denial, interest shall be paid from the above date, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

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

As this matter was filed ~~after~~ February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

- 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 New York

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

12/11/2023
(Dated)

Alina Shafranov

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:
664118f91c01581c7a884aa0e48bcf1f

Electronically Signed

Your name: Alina Shafranov
Signed on: 12/11/2023