

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

21st Century Pharmacy Inc  
(Applicant)

- and -

National Liability & Fire Insurance Company  
(Respondent)

AAA Case No. 17-22-1257-4324

Applicant's File No. RFA22-308095

Insurer's Claim File No. 9TNLV09022-01

NAIC No. 20052

### ARBITRATION AWARD

I, Darren Sheehan, 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 12/04/2023  
Declared closed by the arbitrator on 12/04/2023

Ryan Woodworth from The Russell Friedman Law Group LLP participated virtually for the Applicant

Justin Calabrese from Hollander Legal Group PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,233.02**, was AMENDED and permitted by the arbitrator at the oral hearing.

The parties stipulated to the amount in dispute being \$1,228.00 (Fenoprofen Calcium, \$1,045.40; Acetaminophen \$182.60).

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

3. Summary of Issues in Dispute

Applicant submitted a bill in the amount of \$1,328.40 for date of service 11/13/2019. The bill relates to prescriptions for Fenoprofen Calcium, Acetaminophen and

Gabapentin provided to the claimant, a 60-year-old male, involved in a motor vehicle accident on 9/27/2019.

Respondent paid \$95.38, leaving a balance of \$1,233.02 (No reimbursement was made for Fenoprofen Calcium & Acetaminophen; and for Gabapentin, respondent paid \$95.38 of the billed \$100.40).

The balance of the bill was denied payment on the basis of a peer review prepared by Jay Weiss, M.D., dated 1/9/2020, who determined that the prescriptions were not medically necessary.

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

The insurer's expert must show that the services provided were inconsistent with the generally accepted medical/professional standards that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling. *Prime Psychological Services P.C. v. Progressive Casualty Ins. Co.*, 24 Misc 3d 1244(A), 2009 N.Y. Slip Op. 51868(U) at 3 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009).

"[T]here appears to be no basis in the law, and no basis in logic, for accepting an affirmed peer review doctor's opinion, *carte blanche*, without scrutinizing the report's content." Where a peer review opinion rests upon conclusory assumptions and/or disputed facts, the review is insufficient to prove the insurer's entitlement to judgment as a matter of law on its lack of medical necessity defense. *Novacare Medical P.C. v. Travelers Property Casualty Ins. Co.*, 31 Misc. 3d 1205(A), 2011 N.Y. Slip Op. 50500(U) at 4 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

Dr. Weiss reported that the claimant was involved in a motor vehicle accident on 9/27/2019. No further details were mentioned.

While the claimant did not seek immediate emergency care, the following day he was seen at Jacobi Emergency Department for complaints of pain in his neck and back. Once more, no additional information was provided.

One week later, (the peer reviewer did not indicate whether or not there was any other treatment during that unspoken period), on 10/4/2019, the claimant was evaluated by Dr. Kaloz.

The peer review summarized the findings then as follows:

He was seen on 10/4/19 by Dr. Kaloz and was complaining of injuries to the neck, upper and lower back. It was reported the pain was radiating to the left groin and left inner thigh with numbness. On physical examination, reflexes were symmetric, range of motion was decreased throughout the cervical and lumbar spine, and sensation was decreased in a left L2 and L3 distribution. No focal weakness was noted. The plan was for chiropractic care two to three times a week for four to six weeks, also cervical and lumbar MRI and orthopedic consult.

On 10/11/2019, the claimant was examined by Dr. Cruz-Banting. Dr Weiss wrote:

[Claimant] was seen on 10/11/19 by Dr. Cruz-Banting. At that time, he was complaining of neck pain radiating to the shoulders with stiffness, low back pain and left hip and groin pain. It was noted he was seen at Jacobi Hospital where he was given ibuprofen and methocarbamol. It was noted his medications were ibuprofen, methocarbamol, lidocaine patch, gabapentin, mirtazapine, nortriptyline and tamsulosin. On physical examination, there was decreased range of motion in the cervical and lumbar spine. The plan was for therapy, acupuncture, posturography, video nystagmography, x-rays and to take Trezix one tablet three times a day, also a lumbar support, orthopedic consultation and trigger point injections.

During a follow-up evaluation with Dr. Cruz-Banting on 11/8/2019, the claimant similar findings were reported and the doctor's plan was to continue the claimant on Trezix and Gabapentin and now begin Nalfon. A cervical traction unit, lumbar corset and trigger point injections were also recommended.

From here, Dr. Weiss went on to argue that there was no medical necessity for the prescribed medication. The only medical reference included in the peer review was the website Goodrx.com. This website advertises discounted medication and provides

general descriptions of the medications along with random articles such as the "5 Shampoos That Contribute to Hair Loss". Certainly, it cannot be reasonable said that this website is a meaningful medical authority which is generally accepted within the medical field to set forth standards by which practitioners should be guided. Thus, respondent's peer review fails to establish the lack of medical necessity for the prescribed medication, see Nir v. Allstate Ins. Co., 7 Misc.3d 544, 796 N.Y.S.2d 857 (Civ. Ct. Kings Co. 2005).

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                     |
|--------------|----------------------------------|----------------------------|-------------------|-------------------|----------------------------|
|              | <b>21st Century Pharmacy Inc</b> | <b>11/13/19 - 11/13/19</b> | <b>\$1,233.02</b> | <b>\$1,228.00</b> | <b>Awarded: \$1,228.00</b> |
| <b>Total</b> |                                  |                            | <b>\$1,233.02</b> |                   | <b>Awarded: \$1,228.00</b> |

B. The insurer shall also compute and pay the applicant interest set forth below. 07/08/2022 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim(s) in question arose from an accident that occurred on or after April 5, 2002, the insurer shall compute and pay the applicant the amount of interest computed from the filing date of this case, at the rate of 2% per month, simple, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c) (stay of interest).

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 Suffolk

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

12/13/2023  
(Dated)

Darren Sheehan

## **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:**  
72b230b518d902fae735a9d019275619

**Electronically Signed**

Your name: Darren Sheehan  
Signed on: 12/13/2023