

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Central Park Physical Medicine P.C.
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1289-0188
Applicant's File No.	2945158
Insurer's Claim File No.	8755180990000001
NAIC No.	22063

ARBITRATION AWARD

I, Jacques M. Leandre, 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 (CS)

1. Hearing(s) held on 11/15/2023
Declared closed by the arbitrator on 11/15/2023

Marcy Cohen from Israel Purdy, LLP participated virtually for the Applicant

Michael Morra from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,206.43**, was AMENDED and permitted by the arbitrator at the oral hearing.
The parties amended the amount at issue in this matter to \$1,228.77 in accordance with the applicable provisions of the New York Workers' Compensation Medical Fee Schedule.

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

3. Summary of Issues in Dispute

The Assignor (CS), an 37 year-old male, was involved in a motor vehicle accident on 7/16/23. At issue in this case is an amended \$1,2778.77 for physical medicine provided between 7/22/22 through 1/25/23. Respondent timely denied the claim based upon the independent medical examination (IME) of Dr. Tanuj P. Palvia performed 12/7/22 with an effective termination of benefits date of 12/23/22. The issue to be determined is:

- a) Whether the Respondent can sustain its Medical Necessity defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. No witnesses testified at this hearing. Any documents contained in the electronic file are hereby incorporated into this hearing. I have reviewed all relevant exhibits for both parties and make my decision in reliance thereon.

Medical Necessity

In order to support a lack of medical necessity defense, respondent must "set forth a factual basis and medical rationale for the peer reviewer's determination that there was a lack of medical necessity for the services rendered." See, Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2nd , 11th and 13th Jud.

Dists. 2014). Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See generally, Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

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 Ins. Co., 7 Misc.3d 544, 547, 796 N.Y.S.2d 857, 860 (Civ. Ct. Kings Co. 2005); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 NY Slip Op 50137(U) (N.Y. City Civ. Ct. 2012).

In support of its contention that the services were not medically necessary, Respondent relied upon the independent medical examination (IME) of Dr. Tanuj P. Palvia performed 12/7/22 with an effective termination of benefits date of 12/23/22. After conducting a comprehensive physical examination, Dr. Palvia determined that the Assignor had reached pre-accident state and all injuries were resolved.

The results of this IME presented a cogent medical rationale as to why further medical services were not medically necessary. Accordingly, the burden now shifts to Applicant, who bears the ultimate burden of persuasion. See, Bronx Expert, supra. In opposition to Respondent's contentions, the Applicant relies on the medical records and evaluations which were conducted contemporaneously with Dr. Palvia's IME. A bulk of the medical records and evaluations provide a contrary narrative to Dr. Palvia's IME. On 11/22/22, the Assignor appeared before Dr. Samuel M. Theagene and was still in considerable pain. His left shoulder was tender. Additionally, he was experiencing significant spasms along the paraspinal muscles and significant spasms on the right and left paralumbar musculatures affecting the range of motion in all planes.

In this matter, I am faced with conflicting opinions concerning the medical necessity for the disputed treatment herein. There are no legal issues to resolve. As such, this dispute involves solely an issue of fact, that is, whether or not further treatment was medically necessary following Respondent's IME. Resolution of that fact is determined by which opinion is accepted by the trier of fact.

After reviewing the totality of the evidence and hearing the arguments presented by the parties, I find that Applicant was more persuasive and further medical services were warranted following Dr. Palvia's IME. It is clear that the Assignor was still experiencing significant pain and that the therapy in question was warranted.

Accordingly, Applicant is awarded \$1,228.77.

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
	Central Park Physical Medicine P.C.	07/22/22 - 07/27/22	\$108.72		Denied
	Central Park				

	Physical Medicine P.C.	08/08/22 - 08/15/22	\$44.34		Denied
	Central Park Physical Medicine P.C.	08/26/22 - 08/30/22	\$104.34		Denied
	Central Park Physical Medicine P.C.	12/14/22 - 12/28/22	\$402.74		Denied
	Central Park Physical Medicine P.C.	01/09/23 - 01/09/23	\$131.81		Denied
	Central Park Physical Medicine P.C.	12/30/22 - 01/06/23	\$395.43		Denied
	Central Park Physical Medicine P.C.	01/19/23 - 01/19/23	\$360.00		Denied
	Central Park Physical Medicine P.C.	01/11/23 - 01/25/23	\$659.05		Awarded: \$1,228.77
Total			\$2,206.43		Awarded: \$1,228.77

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/02/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

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

The insurer shall also pay the applicant for attorney's fees as set forth below Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (as existing on the filing date of this arbitration), subject to a maximum fee of \$1,360.00.

- 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 Queens

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

12/15/2023

(Dated)

Jacques M. Leandre

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:
0104c5d60ea2cb2e6c9a0e8e4f6607b7

Electronically Signed

Your name: Jacques M. Leandre
Signed on: 12/15/2023