

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Hudson Regional Hospital (Applicant)	AAA Case No.	17-23-1297-7114
- and -	Applicant's File No.	HUDR-GNY-BXNY-047
	Insurer's Claim File No.	0643115590101020
Geico Insurance Company (Respondent)	NAIC No.	22055

ARBITRATION AWARD

I, Steven Celauro, 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: DNT

1. Hearing(s) held on 11/20/2023
Declared closed by the arbitrator on 11/20/2023

David Quinones from Callagy Law, PC participated virtually for the Applicant

Kirandeep Toor from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$16,145.53**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was reduced to \$15,368.04 to comport with the balance remaining on the applicable policy.

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

3. Summary of Issues in Dispute

This arbitration arises out of medical treatment for the EIP (DNT), a 35-year-old female, related to injuries sustained as a driver in a motor vehicle accident that occurred on 2/24/20. Applicant seeks reimbursement for medical services provided on 11/1/22. Respondent timely denied reimbursement based upon the orthopedic IME of Dr. Margulies, dated 1/26/21.

4. Findings, Conclusions, and Basis Therefor

Applicant has established its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]). The burden shifts to the insurer to prove that the services were not medically necessary.

If an insurer asserts that the medical test, treatment, supply or other service was medically unnecessary, the burden is on the insurer to prove that assertion with competent evidence such as an independent medical examination, a peer review or other proof that sets forth a factual basis and a medical rationale for denying the claim. (See *A.B. Medical Services, PLLC v. Geico Insurance Co.*, 2 Misc. 3d 26 [App Term, 2nd & 11th Jud Dists 2003]).

An IME report asserting that no further treatment is medically necessary must be supported by a sufficiently detailed factual basis and medical rationale, which includes mention of the applicable generally accepted medical/professional standards. *Carle Place Chiropractic v. New York Central Mut. Fire Ins Co.*, 19 Misc.3d 1139(A), 866 N.Y.S.2d 90 (Table), 2008 N.Y. Slip Op. 51065(U), 2008 WL 2228633 (Dist. Ct., Nassau Co., May 29, 2008, Andrew M. Engle, J.). An IME report must set forth a factual basis and medical rationale for the conclusion that further services are not medically necessary. E.g., *Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance*, 20 Misc.3d 144(A), 873 N.Y.S.2d 238 (Table), 2008 N.Y. Slip Op. 51863(U), 2008 WL 4222084 (App. Term 2d & 11th Dists. Sept. 3, 2008).

The IME report by Dr. Margulies states the following: The EIP reports that following the accident she injured her neck, back, right shoulder and left knee. She did not go to the hospital but saw a physician on 2/25/20 and subsequently began a course of physical therapy, massage and chiropractic treatment. At the time of the IME, complaints were of pain in the low back and right shoulder as well as dizziness. Examination of the cervical, thoracic and lumbar spine as well as the shoulders and knees yielded negative results, which included unrestricted ranges of motion. Orthopedic and neurological testing was likewise negative. Dr. Margulies determined that the EIP had sustained cervical and lumbar sprains, resolved; left knee contusion, resolved; right shoulder contusion, resolved. Further treatment from an orthopedic viewpoint, including physical therapy and medications, were not medically necessary.

The Applicant refers to the EIP's medical records and reports and in particular, points to the 2/25/20 report from Mendoza Chiropractic which noted complaints of neck pain which had been made worse by the accident. In addition, the Applicant relies upon the operative report for a cervical discectomy performed on 11/1/22.

After reviewing the medical records, I find that the Applicant has not provided detailed medical records of a physical examination which was contemporaneous with the IME

conducted on 1/26/21 and which justified the services at issue. I find that the Applicant has failed to provide sufficient details of the actual condition of the EIP and how or why continued treatment would be medically necessary at or around the time that the IME was conducted. I find that the EIP's medical records are insufficient to adequately meet the Applicant's burden of persuasion. The IME provided a detailed and comprehensive report of an examination, findings and diagnosis. I find that the Applicant has failed to rebut the insurer's prima facie showing arising from the IME report, which provides a factual basis and medical rationale. After a careful review of the records and consideration of the parties' oral arguments, I find that Applicant has not successfully refuted the findings of the IME.

Therefore, I find in favor of the Respondent.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The above noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing; only the arguments offered at the hearing are preserved in this decision. Any arguments not presented at the hearing are considered waived.

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 Nassau

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

12/20/2023
(Dated)

Steven Celauro

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:
a196ce38f33b34d2a2e031e85ed78acf

Electronically Signed

Your name: Steven Celauro
Signed on: 12/20/2023