

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Q Pharmacy Rx, Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-23-1295-9406

Applicant's File No. GM23-585517

Insurer's Claim File No. 8728678460000001

NAIC No.

ARBITRATION AWARD

I, Gerry Wendrovsky, 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: EIP

1. Hearing(s) held on 12/20/2023
Declared closed by the arbitrator on 12/20/2023

Jay Koo from Law Offices of Gabriel & Moroff, P.C. participated virtually for the Applicant

Tal Sloan from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,935.80**, 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 EIP, AP, a 30-year-old male was involved in a motor vehicle accident on 12/10/22. At issue is \$1,935.80 for medication issued on 1/13/23. Respondent denied the claim based upon the peer review of Dr. Dilip Subhedar, dated 2/28/23. The question presented is whether the medication was medically necessary.

4. Findings, Conclusions, and Basis Therefor

This case has been 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. The hearing was conducted via Zoom. There were no witnesses. I have reviewed the documents contained in MODRIA for both parties and made my decision in reliance thereon. This decision is in full disposition of the issues before me.

At the hearing, the applicant amended its claim to \$1,934.80, in accordance with the relevant fee schedule.

An applicant establishes its *prima facie* entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue. *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 A.D. 3d 742 (2nd Dept., 2004). The applicant has submitted sufficient credible evidence to establish its *prima facie* case.

Peer Review

A defense that medication was not medically necessary may properly be established with a peer review [Jacob Nir, as assignee of John Doe and Allstate, 7 Misc. 3d 544, 547 (Civ. Ct. 2005)], which must "*set forth a factual basis and medical rationale for the peer reviewer's determination*" *Provvedere, Inc. v. Republic Western Ins. Co.*, 2014 NY Slip Op 50219(U) (App. Term 2014). A peer review's medical rationale will be insufficient to meet respondent's burden of proof if: 1) 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 for its findings; or 3) it fails to provide specifics as to the claim at issue, is conclusory or vague. *All Boro Psychological Servs. P.C. v. GEICO*, 2012 NY Slip Op 50137(U) (Civ. Ct. 2012); Nir, *supra*.

For brevity and readability, references to the medical literature are stated as [Cite].

In contending the medication- Lidothol -was not medically necessary, respondent relied upon the peer review of Dr. Subhedar (pain management), who reported reviewing the EIP's medical records, noting in pertinent part:

".... The (EIP) sustained injuries to the neck, left shoulder and lower back ... Post MVA (the EIP) saw Koutsospyros, Demetrios, MD on 01/10/2023 for complaints of pain examination findings were noted positive for decreased ROM. Diagnoses of cervical herniated disc, cervical radiculopathy, lumbar herniated disc, lumbar radiculopathy (EIP) was advised to undergo conservative care. He was advised to undergo physical therapy office visit note provided for my review by Dr Koutsospyros, Demetrios, MD dated 01/11/2023 (EIP) examination findings included decreased ROM. There was a limited range of motion of the lumbar spine and pelvis, especially with extension.

Mild muscle weakness in upper and lower extremities; impaired proprioception; segmental sensory changes; diminished reflexes.

Dr. Subhedar then opined the medication was not medically necessary in pertinent part:

*".... According to the medical standard of care, topical lidocaine is only indicated when there is **documentation of a diagnosis of neuropathic pain from post herpetic neuralgia. Neuropathic pain is defined as pain caused by damage or disease affecting the somatosensory nervous system** the administration of topical lidocaine is not proven for various pain conditions and is not the medical standard of care. [Cite] "Acute and chronic pain condition require a selection of therapeutical arsenal for long-term use. Topical effect could be achieved using nonsteroidal anti inflammatory, anesthetics or analgesics drugs and/or other ingredients with counterirritant effects there are not many controlled trials concerning the use of these products." [Cite] "While the lidocaine patch plus ibuprofen group did not show a statistically significant improvement in pain score when compared to ibuprofen alone, **there was a less variable reduction in pain possibly indicating more consistent pain reduction.** Further investigation with a larger multicenter trial should be performed to evaluate the efficacy of transdermal lidocaine as an adjunctive treatment for acute musculoskeletal pain." [Guidelines] **topical lidocaine is only indicated when there is documentation of a diagnosis of neuropathic pain.** In this instance, a trial for a period of not greater than four weeks can be considered, with the need for documentation of functional gains as criteria for additional use. **Documentation is lacking in supporting a trial has been performed** use of this medication for a musculoskeletal injury related to a motor vehicle accident is not the standard of care"*

Rebuttal

Applicant submitted the rebuttal of Dr. Drora Hirsch, dated 4/5/23, who asserted additional medical history in pertinent part:

*".... neuropathic pain from post-herpetic neuralgia is not the only indication for prescribing the Lidothol 4.5-5% Film. Lidocaine does also have analgesic benefits and thus was prescribed to this patient "lidocaine is a highly effective pain reliever and its unique non-narcotic and non- addictive properties make it a benign alternative to opioids, without the risks and devastating side effects of opioids." findings were sufficient to warrant the prescription of Lidothol film as **these are clear indications of musculoskeletal and neuropathic pain** "Spinal disorders, including radiculopathy due to disc herniation, spinal stenosis, or spinal cord injury, are common causes of neuropathic pain." [Cite]*

"Trauma, causing nerve injury, can lead to neuropathic pain. (efficacy of lidocaine and topical medications)"

Discussion

I have reviewed the medical reports.

For the medication to be medically necessary, it must be "*reasonable in light of the (EIP's) injury, subjective and objective evidence of the patient's complaints of pain, and the goals of evaluating and treating the patient.*" Fifth Avenue Pain Control Center v. Allstate, 196 Misc. 2d 801, 807-808 (Civ. Ct. 2003).

I find the applicant did not present sufficient evidence demonstrating the prescribing of the medication was within generally accepted medical standards. While the rebuttal did present evidence of the medication's general benefits, the applicant did not demonstrate the presence of objective neuropathic findings; rather it set forth a hypothetical rationale for the issuance of the medication.

Applicant's claim is denied.

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 NY

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

12/23/2023
(Dated)

Gerry Wendrovsky

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:
d1ff2124dd5b7856deb798d1a4ce314e

Electronically Signed

Your name: Gerry Wendrovsky
Signed on: 12/23/2023