

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Story Ave Pharmacy Inc d/b/a 99 Cents &
Up
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1293-1951
Applicant's File No.	OS-68661
Insurer's Claim File No.	0474646640101076
NAIC No.	22055

ARBITRATION AWARD

I, Sandra Adelson, 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: the patient

1. Hearing(s) held on 06/27/2024
Declared closed by the arbitrator on 06/27/2024

Olga Sklyut, Esq. from Law Office of Olga Sklyut P.C. participated virtually for the Applicant

Jerry Marino from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,666.40**, was AMENDED and permitted by the arbitrator at the oral hearing.

The applicant amended this claim to \$2,125.82 as a fee schedule correction.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that there was no fee schedule issue to litigate

3. Summary of Issues in Dispute

The patient was a 37 year old female driver who was involved in a motor vehicle accident which took place on 9/12/22. The applicant seeks payment for celecoxib, baclofen and lidocaine which was provided to the patient on 12/18/22.

The respondent issued a denial based on the peer review report of Dr. Shruti Patel, MD.

4. Findings, Conclusions, and Basis Therefor

The record consisted of claimant's submission, respondent's submission, as well as documents not enumerated within this decision, but which are contained in the case file maintained by the American Arbitration Association. **THE ARBITRATOR SHALL BE THE JUDGE OF THE RELEVANCE AND MATERIALITY OF THE EVIDENCE OFFERED** pursuant to 11 NYCRR 65-4.5 (o) (1) (Regulation 68-D). The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. Based on a review of the documentary evidence, this claim is decided as follows:

A presumption of medical necessity attaches to a timely submitted no fault claim. All County Open MRI & Diagnostic Radiology. P.C. v. Travelers Ins. Co., 11 Misc. 3d 131[A], 815 N.Y.S.2d 493 (App.Term 9th & 10th Jud. Dists. 2006). The burden then shifts to the defendant to rebut the presumption of medical necessity. A.B. Medical Services PLLC v. Utica Mut. Ins. Co., 10 Misc 3d 50, 809 N.Y.S.2d 765 (App.Term 2nd & 11th Jud. Dists. 2005); and A Plus Medical, P.C. v. Government Employees Ins. Co., 21 Misc 3d 799, 870 N.Y.S.2d 858 (Civil Ct. Kings Co. 2008).

In order to meet this burden, the defendant must establish the treatment or tests in question were not in accordance with generally accepted medical/professional practice. Delta Medical Supplies, Inc. v. NY Central Mutual Ins. Co., 14 Misc. 3d 1231[A], 836 N.Y.S.2d 492 (Civil Ct. Kings Co. 2007); and CityWide Social Work & Psychological Servs. V. Travelers Indem. Co., 3 Misc 3d 608, 777 N.Y.S.2d 241 (Civil Ct. Kings Co. 2004)

The defendant must prove there is a factual basis and medical rationale for the opinion of the its expert. Prime Psychological Services v. Progressive Cas. Ins. Co., 24 Misc 3d 1244[A], 901 N.Y.S.2d 902, 2009 NY Slip Op 51868[U] (Civil Ct. Richmond Co. 2009); and Nir v. Allstate Ins. Co., 7 Misc 3d 544, 796 N.Y.S.2d 85 . The respondent relied on the peer review report of Dr. Shruti Patel, MD.

Celecoxib:

Dr. Shruti Patel's peer review report opined that the three medications in issue were not medically necessary. The peer review report noted that unless contraindicated NSAID are considered first line therapy in most patients. With regard to celecoxib, after the side effect profile of non-selective NSAID, selective NSAID were developed in the hopes to refrain from similar side effects. However Cox-2 inhibitors have a high cardiovascular side effect profile. Dr. Patel also referred to a medical article within the peer review report which noted that "Several randomized controlled clinical trials in patients with rheumatoid arthritis or osteoarthritis have demonstrated that COX-2 inhibitors are no more effective than traditional NSAIDs". Dr. Patel also noted that the standard of care in pain management notes that nonselective NSAID should be the first line in treatment of pain along with other conservative therapy. Although Dr. Patel noted the cost issue with celecoxib, it was not the only reason that this medication was deemed not necessary.

Dr. Patel also argued that in reviewing the literature, medical standard of care, and studies, lidocaine is recommended as a treatment for neuropathic pain, however in acute pain, studies have shown that it has no added benefit. It was his opinion that the standard of care remains to initiate non pharmacologic therapy, and NSAID, and if neuropathic pain is of concern, then consider SNRI or tricyclic antidepressant prior to reaching for lidocaine.

In reply to Dr. Patel, Mr. Bu, NP's rebuttal report stated that "As evident from the patient's medical records, the patient sustained injuries to the neck, back, and left shoulder and developed complaints of pain associated with positive clinical findings such as tenderness, spasms, and decreased range of motion. She required some treatment for temporary relief from pain during the ongoing course of conservative care in order to enhance the efficacy of the conservative treatment. Hence, the Celecoxib capsules were prescribed to quell the pain.

Common uses for NSAIDs include treatment for:

- Mild or moderate back pain, tenderness, inflammation, and stiffness
- Activity-related pain or discomfort, such as pain that follows sports housework, shoveling snow, or other exertion
- Pain-related to muscle strain in the low back and elsewhere
- Neck stiffness related to muscle, ligament, or tendon strains or damage
- Osteoarthritis joint pain
- Post-surgical pain.

Celecoxib may be considered for the treatment of patients with acute pain, arthritic conditions or primary dysmenorrhea as an alternative to the non-selective non-steroidal anti-inflammatory drugs (NSAIDs), e.g. naproxen and ibuprofen. A significant benefit

of celecoxib is that it is associated with less risk of gastrointestinal bleeding compared to non-selective NSAIDs.

"Celecoxib is in a class of NSAIDs called COX-2 inhibitors. It works by stopping the body's production of a substance that causes pain and inflammation...." (Celecoxib; Medline Plus; U.S. National Library of Medicine; last revised: 03/15/2021)

"Celecoxib is a non-steroidal anti-inflammatory drug (NSAID). It works by reducing hormones that cause inflammation and pain in the body." (Celecoxib, Medically reviewed by Philip Thornton, DipPharm. Last updated on Dec 1, 2020)"

Upon a review of the arguments set forth by each side, I find that the arguments set forth by Mr. Bu, NP were more cogent and clearly related the patient's injuries to the need for this medication. The rebuttal report cogently refuted the peer review report as to the medication celecoxib.

Lidocaine:

With regard to lidocaine, Dr. Patel stated that "Pain is among the most debilitating symptoms for any patient. It is important to differentiate nociceptive pain from neuropathic as the treatment is often different." He then explained that all types of pain should first be treated with nonpharmacologic therapy, however if persistent then pharmacologic therapy may be utilized. Nociceptive pain is treated with NSAID as first line therapy and topical agents such as topical NSAID or lidocaine as second- or third-line therapy. Neuropathic pain is often treated with SNRI or tricyclic antidepressants, gabapentinoids as first line treatment. Topical Lidocaine is often not considered as first line treatment for neuropathic pain or osteoarthritic pain. If a patient is intolerant or not responding to other treatments, lidocaine may be considered as a second and/or third line treatment management for neuropathic pain only. However, Dr. Patel referenced the following article which noted that "Topical agents that have an effect on the peripheral nervous system are effective at delivering rapid, targeted pain relief of peripheral NP [neuropathic pain] without the side effects associated with systemic, oral therapies." Sommer C, Cruccu G. Topical Treatment of Peripheral Neuropathic Pain: Applying the Evidence. *J Pain Symptom Manage.* 2017 Mar;53(3):614-629. doi: 10.1016/j.jpainsymman.2016.09.015. Epub 2016 Dec 29. PMID: 28042075. The foregoing article would clearly support the prescription of lidocaine.

In reviewing and comparing the arguments of the parties, I find that Dr. Patel essentially conceded that the patient had pain which required treatment. Prior to the medication being provided, I find that Dr. Patel established that the patient was in a state of neuropathic pain. As per the most recent office visit note provided for Dr. Patel's review by Kyungsook Bu, FNP dated 12/15/2022, the patient continued to complain of headache and pain in the neck, upper back, middle back, and lower back as well as the cervical and thoracic spine. I therefore find that respondent's own peer review report established the necessity for the lidocaine ointment. Additionally, applicant's rebuttal

report by Kyungsook Bu, NP cogently refuted the peer review report which disallowed the lidocaine medication.

Baclofen:

With regard to baclofen, Dr. Patel argued that "Back and neck pain both are quite common presentations post motor vehicle accidents. Standard of care for initial management is always to try nonpharmacologic therapy as most symptoms do tend to resolve in 3-4 weeks. If symptoms persist, pharmacologic therapy with NSAID is considered the first line. Muscle relaxants can be used as an adjunctive therapy for second or third line agents. Common side effect of muscle relaxant is sedation and therefore should be used very cautiously. Muscle relaxant should be avoided in elderly patients due to increased concern for falls due to excessive sedation."

Dr Patel also asserted his personal opinion that in reviewing the studies, it is noted that muscle relaxants should only be used for short term and with extreme caution due to the concern for sedation. Long term use of these medications is not accepted as it has habit forming potential. Standard of care remains to use NSAID if there is no contraindication and physical therapy. Reviewing the case, documentation provided does not indicate any failed first line therapy. Therefore, it's no standard of care to prescribe muscle relaxant, Baclofen 20 mg in this case and was not medically necessary or appropriate.

In reply applicant's rebuttal report cogently refuted the peer review report arguments relating to baclofen. Mr. Bu, NP stated that

""Baclofen is used to treat muscle pain, spasms, and stiffness in people with multiple sclerosis or spinal cord injury or disease." (Baclofen, Medically reviewed by Kaci Durbin, MD. Last updated on Sep 1, 2021. Drugs.com)

Baclofen is indicated for the symptomatic treatment of muscle spasms occurring in spinal cord diseases of infectious, degenerative, traumatic, neoplastic, or unknown origin such as multiple sclerosis, spastic spinal paralysis, amyotrophic lateral sclerosis, syringomyelia, transverse myelitis, traumatic paraplegia or paraparesis, and compression of the spinal cord. Baclofen (beta-[4-chlorophenyl]-GABA) is an agonist at the beta subunit of gamma-aminobutyric acid on mono and polysynaptic neurons at the spinal cord level and brain. The thinking is that Baclofen reduces the release of excitatory neurotransmitters in the pre-synaptic neurons and stimulates inhibitory neuronal signals in the post-synaptic neurons with resultant relief of spasticity.

The rebuttal report also noted that medical literature supports the efficacy of Baclofen for treating muscle spasms:

"Baclofen is a chlorophenyl derivative of gamma aminobutyric acid (GABA), a naturally occurring inhibitory neurotransmitter in the brain and spinal cord. It is of proven therapeutic value in reducing the severity of flexor or extensor spasms resulting from spinal cord injury or disease." (Baclofen, Meyler's Side Effects of Drugs (Sixteenth

Edition) The International Encyclopedia of Adverse Drug Reactions and Interactions 2016, Pages 809-816)

Baclofen acts on the spinal cord nerves and decreases the number and severity of muscle spasms caused by multiple sclerosis or spinal cord diseases."

In reviewing the arguments of the parties and a comparison and review of the submissions of the parties, I find that the applicant's proof cogently and credibly refuted the peer review report of Dr. Patel.

The medication in issue is granted at the amended amount of \$2,125.82.

- 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
	Story Ave Pharmacy Inc d/b/a 99 Cents & Up	12/18/22 - 12/18/22	\$2,666.40	\$2,125.82	Awarded: \$2,125.82
					Awarded:

Total	\$2,666.40	\$2,125.82
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B. The insurer shall also compute and pay the applicant interest set forth below. 03/30/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

The Respondent shall compute and pay the Applicant the amount of interest computed from the date set forth above 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).

C. Attorney's Fees

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

Applicable attorney fees on the amount awarded in accordance with 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, Sandra Adelson, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/09/2024
 (Dated)

Sandra Adelson

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:
e3be02f9ff914083b46ed10c63164815

Electronically Signed

Your name: Sandra Adelson
Signed on: 07/09/2024