

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Healthcare Partners  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No. 17-24-1330-7174  
Applicant's File No. 3152155  
Insurer's Claim File No. 0295310090101139  
NAIC No.

### ARBITRATION AWARD

I, Anne Malone, 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 06/18/2024  
Declared closed by the arbitrator on 06/18/2024

Gary Pustel, Esq. from Israel Purdy, LLP participated virtually for the Applicant

Chad Meyers from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$392.00**, 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 52 year old EIP reported involvement in a motor vehicle accident on October 30, 2022; claimed related injury and underwent an office visit on October 12, 2023, Shockwave treatment on October 27, 2023 and physical therapy provided by the applicant on October 23, 2023 and October 27, 2023.

The applicant submitted a claim for these medical services. Payment of the bills for the office visit and physical therapy were denied based on the IME of the EIP by Aruna Seneviratne, M.D. which was performed on July 5, 2023. The IME cut-off was effective on July 20, 2023.

The denial of the bill for Shockwave treatment provided on October 27, 2023 states that it was paid according to an agreement between the parties. However, no payment was made.

**The issues to be determined at the hearing are:**

**Whether the respondent established that the bill for Shockwave treatment provided on October 27, 2023 was properly denied.**

**Whether the respondent established that the office visit provided on October 12, 2023 and the physical therapy treatment rendered on October 23, 2023 and October 27, 2023 were not medically necessary.**

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

This hearing was held on Zoom and the decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

##### Denial of the bill for date of service October 27, 2023

The applicant billed \$75.00 for Shockwave treatment provided to the EIP on October 27, 2023. The denial for this treatment states that it was reimbursed pursuant to a settlement agreement between the parties dated December 9, 2022. However, the submissions do not include any proof of payment of this bill.

Under these circumstances, the bill for the Shockwave treatment provided on October 27, 2023 was not properly paid.

**Therefore, the applicant is awarded \$75.00 for the Shockwave treatment rendered on October 27, 2023.**

##### Medical Necessity

The remainder of the bills submitted by the applicant for dates of service October 12, 2023, October 23, 2023 and October 27, 2023 were denied by the respondent for a lack of medical necessity.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip

Op 50219(U) (App. Term 2d, 11<sup>th</sup> and 13<sup>th</sup> 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 Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1<sup>st</sup> Dept. 2006.)

The Civil Courts have held that a defendant's peer review or medical evidence must set forth more than just a basic recitation of the expert's opinion. 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/her findings; and 3) the peer review report fails to provide specifics as to the claim at issue; is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the services provided to the EIP were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Seneviratne which was essentially objectively negative and unremarkable. Range of motion was determined with the assistance of a goniometer. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Seneviratne performed a complete and comprehensive examination of the EIP which identified some findings of tenderness and decreased range of motion in the neck and low back and decreased range of motion in the left knee. However, Dr. Seneviratne determined that there were no objective findings such as atrophy or any positive orthopedic testing to correlate with these subjective complaints.

Dr. Seneviratne documented that the EIP stated that she was working in NYPD/SSD and that she did not lose any time from work.

Based upon the physical examination and medical records reviewed, Dr. Seneviratne determined that despite her subjective complaints, there was no evidence of orthopedic disability and that the EIP could perform her activities of daily living and working without restrictions. It was Dr. Seneviratne's opinion that there was no medical necessity for further orthopedic treatment, physical therapy, massage therapy, surgery, injections, diagnostic testing, durable medical equipment, household help or special transportation.

Respondent has factually demonstrated that the services provided by the applicant were not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1<sup>st</sup> Dept. 2006.)

In response to the report of the physical examination of the EIP by Dr. Seneviratne, the applicant relied upon the submissions, including physical therapy progress notes from July 7, 2023 to October 17, 2023 by Harshit Bhatwala, PT which documented unspecified moderate decreased range of motion in the cervical spine and limited range of motion secondary to pain in the lumbar spine and right knee.

From December 2, 2022 to October 27, 2023, the EIP also underwent physical therapy treatment provided by Juna Rago, PT and Harshit Bhatwala, PT. Dale Harder, PA also provided some PT and Shockwave therapy based on continued complaints of low back pain and a diagnosis of lumbar sprain/strain.

After a review of all the evidence submitted an issue of fact remains as to whether the services rendered are medically necessary. Conflicting opinions have been presented by Dr. Seneviratne based on the independent medical examination of the EIP and the reports of Juna Rago, PT, Harshit Bhatwala, PT who provided physical therapy treatment to the EIP and Dale Harder, PA who provided PT and Shockwave treatment.

Based on the reports and submitted medical records, I find that the negative comprehensive IME report by Dr. Seneviratne was more persuasive in this matter.

Under these circumstances, the respondent has established that the post-IME treatment was not medically necessary.

**Therefore, the claim for post IME office visit and physical therapy is dismissed with prejudice.**

**Accordingly, the applicant is awarded \$75.00 for Shockwave treatment provided on October 27, 2023 and the remainder of the claim is dismissed with prejudice.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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	Status
	<b>Metro Healthcare Partners</b>	<b>10/12/23 - 10/12/23</b>	<b>\$87.80</b>	<b>Denied</b>
	<b>Metro Healthcare Partners</b>	<b>10/23/23 - 10/23/23</b>	<b>\$114.60</b>	<b>Denied</b>
	<b>Metro Healthcare Partners</b>	<b>10/27/23 - 10/27/23</b>	<b>\$75.00</b>	<b>Awarded: \$75.00</b>
	<b>Metro Healthcare Partners</b>	<b>10/27/23 - 10/27/23</b>	<b>\$114.60</b>	<b>Denied</b>
<b>Total</b>			<b>\$392.00</b>	<b>Awarded: \$75.00</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 12/29/2023 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." See 11 NYCRR §64-3.9(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. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30<sup>th</sup> day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. 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 was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 CT  
SS :  
County of Fairfield

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

07/17/2024  
(Dated)

Anne Malone

**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:**  
06cd51e017d0c512bf5a9739558654a0

**Electronically Signed**

Your name: Anne Malone  
Signed on: 07/17/2024