

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Uptown Healthcare Management Inc d/b/a  
ETM- ASC Ambulatory Surgery Center of  
East Tremont  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1318-2802
Applicant's File No.	TLD23-1034552
Insurer's Claim File No.	0521209450101041
NAIC No.	22055

**ARBITRATION AWARD**

I, Camille Nieves, 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: Eligible Injured Person (IR)

1. Hearing(s) held on 07/17/2024  
Declared closed by the arbitrator on 07/17/2024

Kurt Lundgren from Thwaites, Lundgren & D'Arcy Esqs participated virtually for the Applicant

Farhan Imtiaz from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$10,095.12**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant amended the amount in dispute to \$5677.77 based on the fee schedule.

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

The parties stipulated to the amended amount in dispute.

3. Summary of Issues in Dispute

Applicant seeks reimbursement for a facility fee for right shoulder surgery performed by Dr. Carrer, MD on 5/3/23 following a motor vehicle accident on 11/18/22. The charges were timely denied based on a peer review by Howard Levy, MD dated 7/10/23 based on lack of medical necessity. The EIP was a 51 year old restrained female driver. A rebuttal is submitted by Anjani Sinha, MD.

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

Applicant seeks reimbursement for a facility fee for right shoulder surgery performed by Dr. Carrer, MD on 5/3/23 following a motor vehicle accident on 11/18/22. The charges were timely denied based on a peer review by Howard Levy, MD dated 7/10/23 based on lack of medical necessity. The EIP was a 51 year old restrained female driver. A rebuttal is submitted by Anjani Sinha, MD.

The peer reviewed the pertinent records and states the EIP was a 51 year old restrained female driver not treated in an ER who was evaluated on 11/22/22 for right shoulder pain 8/10. There was tenderness on exam and decreased range of motion. A shoulder sprain was diagnosed and therapy was recommended.

On 12/17/22 there was right shoulder pain 8/10. There was tenderness on exam and decreased range of motion. A shoulder sprain was diagnosed and therapy was continued. Therapy was provided from 1/5/23 to 5/2/23 for 39 sessions to the spine but none to the shoulder. A right shoulder MRI was performed on 1/20/23 and reported interstitial tear of the SC tendon, AC joint hypertrophy and rotator cuff impingement. On 2/2/22 there was 7/10 right shoulder pain and 6/10 on 2/13/23 when bursitis and impingement was diagnosed. Surgery was advised. Shoulder ultrasound reported tendinitis and a small articular tear, tendinosis with a small articular tear, bursitis. On 4/26/23 the findings were the same and surgery was recommended.

The peer states the surgery was unnecessary based on the standard of care of three months of conservative treatment with persistent pain. Pain is the main indication for surgery if symptoms last more than 6 to 12 months.

This patient did not receive conservative treatment for the right shoulder.

The 5/3/23 operative report by the surgeon notes the patient failed a course of conservative treatment

Physical therapy notes indicate a diagnosis of spinal and right shoulder on several occasions but back pain on the remainder. The 3/20/23 exam notes right shoulder ranges of motion were within normal limits.

A rebuttal by Anjani Sinha, MD notes a 2/13/23 exam for right shoulder pain despite ongoing therapy for 11 weeks. There was tenderness and positive orthopedic tests as well as decreased ranges of motion. MRI results were noted and surgery was recommended.

The complaints and findings continued on 4/26/23 and surgery was planned.

Dr. Sinha states the surgery was necessary due to 23 weeks of therapy without improvement and continued complaints and positive findings. The surgery was consistent with standards of care and while continued conservative treatment was an option, surgery was an acceptable option as well. Findings at the time of surgery include tendon tears and hypertrophy/impingement which would not be corrected with therapy. The peer noted multiple indications for surgery which existed here such as tears, inflammation, impingement and arthritis and persistent symptoms for at least six months.

I find the peer insufficient to establish lack of medical necessity factually or medically. The peer sets forth acceptable reasons to perform surgery which existed in this case as noted in the rebuttal and based on the records. The peer does not discuss the conservative treatment except to say there was none to the shoulder but this is not the case as some notes indicate there was therapy to the shoulder.

I also find the rebuttal sufficient to establish medical necessity and to rebut the peer.

The charges constitute reasonable and necessary expense and are awarded in the amended amount in dispute.

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
	<b>Uptown Healthcare Management Inc d/b/a ETM- ASC Ambulatory Surgery Center of East Tremont</b>	<b>05/03/23 - 05/03/23</b>	<b>\$10,095.12</b>		<b>Awarded: \$5,677.77</b>
<b>Total</b>			<b>\$10,095.12</b>		<b>Awarded: \$5,677.77</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 09/27/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from the date of filing at a rate of 2% per month, simple, ending with the date of payment of the award.

C. Attorney's Fees

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

Pursuant to 11 NYCRR 65-4.6, 20% of the amount of first party benefits, plus interest thereon, subject to a maximum of \$1360.00.

- 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 FL

SS :

County of Osceola

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

07/20/2024

(Dated)

Camille Nieves

### **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:**  
d36b2ef860ff842ffe34b3ec50cee450

### Electronically Signed

Your name: Camille Nieves  
Signed on: 07/20/2024