

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sams Pharmacy LLC  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-24-1334-2428
Applicant's File No.	GM23-679310
Insurer's Claim File No.	0550653710101025
NAIC No.	35882

**ARBITRATION AWARD**

I, Stacey Erdheim, 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: Claimant

1. Hearing(s) held on 07/31/2024  
Declared closed by the arbitrator on 07/31/2024

Helen Cohen from Law Offices of Gabriel & Moroff, 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, **\$1,521.20**, 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

This arbitration arises out of treatment of 28 year old female Claimant (ER) for injuries sustained in a motor vehicle accident occurring on 7/13/23. Applicant seeks reimbursement for a Lidocaine 5% and cyclobenzaprine in the amount of \$1521.20. Respondent timely denied the bill based upon a Peer Review by Howard Levy MD dated 9/27/23.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Case Folder as of the date of the Hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing.

The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary. 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. 11 NYCRR 65-4.5(o)(1). (Regulation 68-D.)

This arbitration arises out of treatment of 28 year old female Claimant (ER) for injuries sustained in a motor vehicle accident occurring on 7/13/23. Applicant seeks reimbursement for a Lidocaine 5% and cyclobenzaprine in the amount of \$1521.20. Respondent timely denied the bill based upon a Peer Review by Howard Levy MD dated 9/27/23.

The record reveals that claimant was injured in a motor vehicle accident on 7/13/23. Claimant was seen for an initial evaluation on 8/16/2023 by Hiram Emmanuel Luigi-Martinez, M.D., the claimant had complaints of neck, mid-back, bilateral shoulder, lower back, and bilateral hip pain rated as 8/10 on the pain scale. Examination of the cervical spine revealed tenderness over the C3-C7 region. The range of motion was decreased. Examination of the thoracic spine revealed tenderness over the paraspinal muscles and facet joint lines. The range of motion was decreased. Examination of the lumbar spine revealed tenderness over the L3-L4 paraspinal muscles. The range of motion was limited. Examination of the bilateral shoulders and bilateral hips revealed tenderness and a decreased range of motion. The diagnoses were bilateral hip bursitis, cervical radiculopathy, spasm of thoracic back muscle, lumbar radiculopathy, and bilateral shoulder bursitis. Pain medications were prescribed. Conservative treatment was recommended. On 8/16/2023 the claimant underwent bilateral shoulder intra-articular shoulder joint injection under local anesthesia by Wei Hong Xu, NP. The pre-operative and postoperative diagnoses were bilateral shoulder subacromial bursitis. On 8/16/2023 the claimant underwent ultrasound-guided suprascapular nerve block injections under local anesthesia by Wei Hong Xu, NP. The pre-operative and postoperative diagnoses were bilateral suprascapular neuritis. On 8/16/2023 the claimant underwent ultrasound-guided lumbar trigger point injection under local anesthesia by Wei Hong Xu, NP. The pre-operative and postoperative diagnoses were myofascial pain syndrome. Claimant was prescribed Cyclobenzaprine 10 mg tablets, Diclofenac sodium 3% gel, and Lidocaine 5% ointment was made available for my review

It is Applicant's *prima facie* obligation to establish its entitlement to payment for each service for which reimbursement is sought. It is well settled that a health care provider establishes its *prima facie* entitlement to payment as a matter of law by 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];

*Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]). Applicant has met its Prima Facie burden in the case at hand.

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]; *Kings Medical Supply Inc. v. Country Wide Insurance Company*, 783 N.Y.S. 2d at 448 & 452; *Amaze Medical Supply, Inc. v. Eagle Insurance Company*, 2 Misc. 3d 128 [App Term, 2nd and 11th Jud Dists 2003]).

In the event an insurer relies on a peer review report to demonstrate that a particular service was medically unnecessary, the peer reviewer's opinion must be supported by sufficient factual evidence or proof and cannot simply be conclusory and should be supported by evidence of generally accepted medical/professional practice or standards. *James M. Ligouri Physician, PC v. State Farm Mut. Auto Ins. Co.*, 2007 N.Y. Slip Op 50465 (U) (N.Y. Dist. Ct. 2007); *Jacob Nir v. Allstate Insurance Company*, 2005 NY Slip Op 25090; 7 Misc.3d 544; 796 N.Y.S.2d 857; 2005 N.Y. Misc. LEXIS 419 and *Citywide Social Work & Psy. Serv. P.L.L.C. v. Travelers Indemnity Co.*, 3 Misc. 3d 608; 777 N.Y.S.2d 241; 2004 NY Slip Op 24034.

In the event that an insurer's evidence rebuts the inference of medical necessity, by proof in admissible form, establishing that the services are not medically necessary and if such proof is not refuted by applicant such proof may entitle the insurer to a judgment in its favor. *Alfa Medical Supplies v. Geico General Ins. Co.*, 36 Misc.3d 156(A), 2012 N.Y. Slip Op. 51765(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2012); *Delta Diagnostic Radiology, PC v. American Transit Insurance Co.*, 18 Misc.3d 128(A), 2007 N.Y. Slip Op. 52455(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007); *A. Khodadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 2007 N.Y. Slip Op. 51342(U) (App. Term 2nd, 11th and 13th Jud. Dists. 2007).

Respondent timely denied the bill based on a Peer Review by Howard Levy MD. Dr. Levy Dr. Levy concluded that the medication was not medically necessary since

The standard of care for a musculoskeletal injury after a motor vehicle accident would begin with a reasonable trial of conservative treatment which consists of an evaluation by the physician, prescribing activity modification if necessary, encouraging return to activity as much as possible, prescription of medications such as anti-inflammatory medications, and conservative physiotherapy for 4-6 weeks, followed by another modified course of therapy and exercises program if the patient is not responding to the initial course of treatment. The long-term use of medication can lead to adverse effects and thus, should be avoided. Further, topical formulations are indicated as an alternative to oral therapy. They are used when the oral route is contraindicated due to swallowing problems, intractable nausea and vomiting, and when the drug in the formulation irritates the gastric mucosa. Several factors must be considered regarding topical preparations.

Applicant argues that the Peer review is conclusory and not supported by generally accepted

medical standards. To meet its burden of proving disputed services were not medically necessary, Respondent's expert must demonstrate the disputed treatment was inconsistent with generally accepted professional practice. Generally accepted practice is the range of practice that the profession will follow in the diagnosis and treatment of the patient in light of the standards and values that define it. CityWide Social Work & Psychological Services, P.L.L.C. v. Travelers Indemnity Co., 3 Misc. 3d 608 (Civ Ct Kings Co 2004). If a peer review is sufficient to establish a defense of a lack medical necessity, then applicant must come forth with its own evidence of medical necessity. West Tremont Med. Diag. P.C. v. GEICO Ins. Co. 13 Misc.3d 131(A) (App Term 2d & 11thDists 2006).

After reviewing the medical records and listening to the oral arguments of the parties, I find that the peer review report of Dr. Levy fails to set forth a sufficient factual basis and medical rationale as to why the medications were not medically necessary. Dr. Levy's report is generic and conclusory and fails to sufficiently explain why prescribing the medications was outside the generally accepted standard of care in the professional medical community. It is insufficient to conclude that the medication is not medically necessary since the effectiveness remains unclear.

Accordingly, in light of the foregoing, based on the arguments of counsel and after a thorough review and consideration of all submissions, I find in favor of the Applicant.

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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
	Sams Pharmacy LLC	08/22/23 - 08/22/23	\$1,521.20	Awarded: \$1,521.20
Total			\$1,521.20	Awarded: \$1,521.20

B. The insurer shall also compute and pay the applicant interest set forth below. 01/29/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the claim arose from an accident that occurred on or after April 5, 2002, interest shall be paid, at the rate of 2% per month, simple, from the arbitration filing date and 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

The insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6

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

08/02/2024  
(Dated)

Stacey Erdheim

### **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:**  
b80d1bf67c37dc6936058a94869186b0

### Electronically Signed

Your name: Stacey Erdheim  
Signed on: 08/02/2024