

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Shahid Mian MD P.C.  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-24-1343-1031
Applicant's File No.	SHM032824003
Insurer's Claim File No.	0503393310101012
NAIC No.	35882

**ARBITRATION AWARD**

I, Melissa Melis, 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: patient

1. Hearing(s) held on 08/01/2024  
Declared closed by the arbitrator on 08/01/2024

Chris Economou, Esq. from Economou & Economou PC participated virtually for the Applicant

Nicole Jeffares from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$604.82**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount of the claim was reduced to \$579.51 in accordance with the New York State Workers Compensation fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The patient, a 67 year old male driver was involved in an automobile collision on September 21, 2023. The Applicant conducted evaluations on the patient on January 8, 2024, February 5, 2024 and March 4, 2024. The claim of payment was denied based on the results of the independent medical examination conducted by Dr. Howard Levin on

December 11, 2023 and the allegation that the bill for the date of service of January 8, 2024 was not received within 45 days of the date of service in violation of 11 NYCRR 65-1.1. The issue is whether or not the Applicant is entitled to No-fault benefits.

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

Applicant is seeking reimbursement for the evaluations performed on the patient on January 8, 2024, February 5, 2024 and March 4, 2024. This hearing was conducted using the documents contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association. All documents contained in the ECF are made part of the record of this hearing and my decision was made after a review of all relevant documents found in the ECF as well as the arguments presented by the parties during the hearing.

In accordance with 11 NYCRR 65-4.5(o) (1), an arbitrator shall be the judge of the relevance and materiality of the evidence and strict conformity of the legal rules of evidence shall not be necessary. Further, the arbitrator may question or examine any witnesses and independently raise any issue that Arbitrator deems relevant to making an award that is consistent with the Insurance Law and the Department Regulations.

The Applicant submitted bills to the Respondent for payment. The claim of payment was denied based on the results of the independent medical examination conducted by Dr. Howard Levin on December 11, 2023. A copy of the examination report was submitted into evidence. Dr. Levin also reviewed some medical records including the MRI results. On the date of the examination, the patient complained of right hip and right knee pain. The examination revealed normal range of motion of the cervical spine, thoracic spine, lumbar spine, bilateral shoulders, right hip and left knee, negative orthopedic tests and no tenderness or spasms. The diagnosis was resolved sprain/strains of the cervical spine, thoracic spine, lumbar spine, bilateral shoulder, right hip and left knee. Dr. Levin stated that the patient was not in need of any further orthopedic treatments, physical therapy, surgery, injections, prescription medications, diagnostic testing, household help, massage therapy, durable medical equipment, transportation or ambulance/ambulette services. Dr. Levin also stated that the "...MRI findings are not clinically significant, as they do not correlate with objective findings on today's examination...".

The Applicant submitted medical records. The patient was examined by the Applicant on January 8, 2024. On that date, the patient complained of radiating neck pain to the upper extremities with paresthesias and weakness, lower back pain and left shoulder pain with clicking. The examination revealed tenderness and spasms upon palpation of the cervical spine and lumbar spine, decreased range of motion of the cervical spine, lumbar spine and left shoulder, positive Spurling's test, positive straight leg raising test, antalgic gait, positive

impingement sign on the left shoulder, positive apprehension test on the left shoulder, positive cross arm test on the left and positive O'Brien's test on the left. The left shoulder MRI conducted on October 12, 2023 revealed a tear of the anterior superior labrum and tendinitis with bursitis. The diagnosis was cervical strain, low back syndrome and tear of the labrum in the left shoulder with impingement syndrome. Dr. Shahid Mian recommended the continuation of the physical therapy, pain management consultation, reports from the MRIs of the cervical and lumbar spine, motrin and possible arthroscopic surgery of the left shoulder.

The cervical and lumbar spine MRIs were performed on November 17, 2023. They revealed herniated discs at C3-4, C4-5, C5-6, C6-7 and bulging discs at L3-4, L4-5 and L5-S1.

The Applicant re-evaluated the patient on February 5, 2024 and March 4, 2024. After these examinations, Dr. Mian recommended the continuation of the physical therapy.

With respect to lack of medical necessity is an affirmative defense that is the Respondent's burden to prove. See, *Alliance Medical Office, P.C. v. Allstate*, 196 Misc.2d 268, 269, 764 N.Y.S.2d 341, 342 (Civil Ct., Kings Cty. 2003); *Choicenet Chiropractic P.C. v. Allstate*, 2003 WL 1904296, 2003 N.Y. Slip Op. 50672U (App.Term 2 Dept. 2003). "At a minimum, [Respondent] must establish a factual basis and medical rationale for the lack of medical necessity of [Applicant's] services. *Nir v. Allstate*, 7 Misc.3d 544, 546-47, 796 N.Y.S.2d 857, 860 (Civil Court, Kings Cty. 2005). Once the insurer makes a sufficient showing to carry its burden of coming forward with evidence of lack of medical necessity, "plaintiff must rebut it or succumb", *Bedford Park Medical Practice P.C. v. American Transit Ins. Co.* 8 Misc. 3d 1025 (A) 806 N.Y.S. 2d 443 (Table).

Applicant must present proof of a physical exam, conducted by a treating health provider, at or about the time the IME was held, which contradicted the IME findings and conclusions in order to rebut the Respondent's lack of medical necessity defense. See, e.g. *Delta Diagnostic Radiology PC v. New York Cent. Mut. Fire Ins. Co.*, 2012 NY Slip Op 51953(U) (App Term, 2nd Dep't 2012).

The Applicant submitted medical records from the treating medical provider showing that the patient was still symptomatic around the time of the examination by Dr. Levin. Dr. Mian examined the patient four weeks after the examination by Dr. Levin. The patient was undergoing physical therapy treatments but was still complaining of radiating neck pain, lower back pain and left shoulder pain. The examination by Dr. Mian revealed decreased ranges of motion along with numerous positive orthopedic tests. I find based on the evidence that the denial of benefits based on the examination by Dr. Howard Levin on December 11, 2023 was not proper or substantiated.

The bill for the date of service of January 8, 2024 was also denied based on the allegation that the bill was not received within 45 days of the date of service in violation of 11 NYCRR 65-1.1.

The Court in the case of State Farm Insurance Company v. Helen Domotor, 266A.D.2d 219, 697 N.Y.S.2d 348 held: "...the petitioner unequivocally notified the appellant in December 1989 that it was denying all no-fault benefits based upon the opinion of its medical expert that the appellant no longer required treatment. This disclaimer of coverage excused the appellant from further compliance with conditions precedent (see, 11 NYCRR 65.12) regarding time limitations for submitting proofs of loss for the treatments she nevertheless continued to undergo. An insurance carrier may not, after repudiating liability, create grounds for its refusal to pay by demanding compliance with proof of loss provisions of the policy. Rather, the insurance carrier "must 'stand or fall upon the defense upon which it based its refusal to pay'... i.e., because 'no treatment [was] necessary' " ( King v State Farm Mut. Auto Ins. Co., 218 AD2d 863, 865, quoting Beckley v Ostego County Farmers Coop. Fire Ins. Co., 3 AD 2d 190)." Essentially the Appellate Division, Second Department in Domotor (cited above) is holding that once an insurance carrier issues a general denial which denies all benefits the Applicant is no longer required to comply with any policy provisions. Rather the insurance carrier is limited to the basis of the general denial in denying future claims.

I find that the Applicant was not under any obligation to comply with any policy conditions including submitted claims. As per the above noted case law, the Respondent is bound by the denial of benefits which repudiated all further No-fault benefits. The evidence shows that the Respondent denied all orthopedic surgery, massage therapy, diagnostic testing, supplies and physical therapy treatments effective December 29, 2023 by a general denial of benefits addressed to the patient on December 21, 2023. The service performed on January 8, 2024 was after the denial of coverage. Therefore, I find based on the evidence and the above noted case law that the Applicant is entitled to No-fault benefits for the evaluations performed on the patient on January 8, 2024, February 5, 2024 and March 4, 2024.

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>Shahid Mian MD P.C.</b>	<b>01/08/24 - 01/08/24</b>	<b>\$350.00</b>	<b>\$324.69</b>	<b>Awarded: \$324.69</b>
	<b>Shahid Mian MD P.C.</b>	<b>02/05/24 - 02/05/24</b>	<b>\$127.41</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
	<b>Shahid Mian MD P.C.</b>	<b>03/04/24 - 03/04/24</b>	<b>\$127.41</b>	<b>\$127.41</b>	<b>Awarded: \$127.41</b>
<b>Total</b>			<b>\$604.82</b>		<b>Awarded: \$579.51</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/05/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

11 NYCRR 65-3.9(a) provides, in pertinent part, "All overdue mandatory and additional personal injury protection benefits due an applicant or assignee shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30 day month..." Since this claim was timely denied but the action was not instituted until 30 days after the date of the denial, interest is due at a rate of 2% per month, simple from the date after the date of filing of this arbitration until the date of payment of this 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(d) which states: "For all other disputes subject to arbitration or court proceedings, subject to the provisions of subdivision (a) of this section, the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360..."

- 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, Melissa Melis, 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)

Melissa Melis

### **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:**  
0bb1a2577ce480403e8b9370197d2060

### Electronically Signed

Your name: Melissa Melis  
Signed on: 08/02/2024