

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Tri-Borough NY Medical Practice PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1330-9895
Applicant's File No.	N/A
Insurer's Claim File No.	0564958260101017
NAIC No.	35882

ARBITRATION AWARD

I, Glen Cacchioli, 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: Assignor

1. Hearing(s) held on 08/27/2024
Declared closed by the arbitrator on 08/27/2024

Lee-Ann Trupia, Esq. from Law Offices of Hillary Blumenthal LLC (Hoboken)
participated virtually for the Applicant

Diana Gonzalez, Esq. from Geico Insurance Company participated virtually for the
Respondent

2. The amount claimed in the Arbitration Request, **\$142.62**, was AMENDED and permitted by the arbitrator at the oral hearing.

Applicant's claim has been reduced to the fee schedule amount of \$114.10.

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

3. Summary of Issues in Dispute

The Assignor is a 38-year-old male who was involved in a motor vehicle accident on March 31, 2023. Following the accident, the Assignor was treated at Applicant's PC. Applicant billed Respondent \$114.10 (amended amount) for an examination performed on November 9, 2023. Respondent denied the claim contending lack of medical necessity based on the IME of Dr. Seneviratne. As such the issue for determination is medical necessity.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the documents contained in the ADR Center and the oral arguments of counsel. There were no witnesses.

Assignor was involved in a motor vehicle accident on March 31, 2023. Following the accident Assignor suffered injuries which resulted in him seeking treatment at various healthcare providers.

Due to continuing complaints of pain and discomfort in the left shoulder and bilateral knees Assignor presented to Applicant's PC on November 9, 2023. The report noted that MRIs of the left and right knee dated November 1, 2023, revealed tears in the medial meniscus. Examination of the left shoulder revealed evidence of splitting and guarding with crepitus, tenderness, and decreased range of motion. Decreased motor strength was noted, and the following tests were positive Neer/Hawkin's tests. Examination of the right knee revealed tenderness, pain, decreased ranges of motion, and positive Lachman and Varus test. Examination of the left knee revealed tenderness, pain, decreased ranges of motion, and a positive McMurray's test. Diagnosis included internal derangement of the left shoulder in both knees.

Applicant billed Respondent \$114.10 for the office visit an office visit on November 9, 2023. Respondent denied reimbursement contending lack of medical necessity based on the Independent Medical Examination (IME) of Dr. Seneviratne.

The issue to be determined is whether the services provided after the IME cut off were medically necessary. Lack of medical necessity is an affirmative defense that is the respondents to prove. See, *Alliance Medical Office, PC v. Allstate Ins. Co.*, 196 Misc.2d 268, 269, 764 N.Y.S.2d 341, 342 (Civil Court, Kings County, 2003); *Chocinet Chiropractic P.C. v. Allstate Ins. Co.*, 2003 WL 1904296, 2003 N.Y. Slip Op. 50672(U)(App.Term2d Dept. 2003).

A denial premised on a lack of medical necessity must be supported by competent evidence such as an IME or peer review or other proof which sets forth a factual basis and a medical rationale for denying the claim (*Amaze Medical Supply, Inc. v. Allstate Ins. Co.*, 2 Misc3d 134(A), 2004 NY Slip Op 50211(U), 2004 WL 758248 [App Term 2d and 11 Jud Dists, 2004]).

Once rebutted the burden shifts to the Applicant to refute the opinion by Respondent's experts and present its own evidence to show the medical necessity of the treatment provided as ultimately it is the Applicant who must prove, by a preponderance of the evidence, that the services were medically necessary. *Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co.*, 37 Misc.3d 19, 22 n., 952 N.Y.S.2d 372, 374 n. (App.

Term 2d, 11th & 13th Dists. 2012); *Bronze Acupuncture, P.C. v. Mercury Ins. Co.*, 24 Misc.3d 126(A), 889 N.Y.S.2d 881 (Table), 2009 N.Y. Slip Op. 51219(U), 2009 WL 1676893 (App. Term 2d, 11th & 13th Dists. June 12, 2009); *A Khodadadi Radiology, P.C. v. NY Central Mutual Fire Ins. Co.*, 16 Misc.3d 131(A), 841 N.Y.S.2d 824 (Table), 2007 N.Y. Slip Op. 51342(U), 2007 WL 1989432 (App. Term 2d & 11th Dists. July 3, 2007).

Respondent's defense is based on the IME report of Dr. Senevirate, which was performed on August 12, 2015, almost 3 months prior to the office visit of November 9, 2023, and the MRI reports of the bilateral knees on November 1, 2023. As a result, Dr. Senevirate did not review the MRI reports or the examination report. His examination revealed no tenderness, no effusion, no crepitus, and normal ranges of motion in the bilateral shoulders. His examination of the bilateral knees revealed no tenderness, no effusion, normal ranges of motion, and negative orthopedic testing. Diagnosis included bilateral knee sprain, resolved and left shoulder sprain resolved. Based on his examination Dr. Senevirate opined that further treatment was not medically necessary.

A review of applicant's submission reveals it has established that Assignor's injuries had not resolved at the time of the IME as Dr. Senevirate stated in his IME report. Applicant relied upon the examination report dated November 9, 2023, which documented continued positive findings in the bilateral knees and left shoulder post IME. Moreover, MRI reports of the bilateral knees revealed meniscus tears in both knees. As such, I find the examination report and MRI findings sufficient to overcome the IME and sustain applicant's burden of persuasion in rebuttal. Therefore, I find there was medical necessity for treatment post IME. Accordingly, applicants claim is granted in the amount of \$114.10.

DECISION: AWARD IN FAVOR OF THE APPLICANT

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
	Tri-Borough NY Medical Practice PC	11/09/23 - 11/09/23	\$142.62	\$114.10	Awarded: \$114.10
Total			\$142.62		Awarded: \$114.10

- B. The insurer shall also compute and pay the applicant interest set forth below. 01/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest is to be calculated from the date of filing of the AR-1 (1/3/24). The end for the calculation of the period of interest shall be excluded from the calculation. In calculating interest, the date of accrual shall be excluded from the calculation (General Construction Law Section 20). Where a motor vehicle accident occurs after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple interest, calculated on a pro rate basis using a 30 day month. 11 NYCRR 65-3.9(a).

C. Attorney's Fees

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

As this matter was filed after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee 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 Nassau

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

09/03/2024
(Dated)

Glen Cacchioli

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:
cc3ff8f73af3b8a1f51008c6c9e0e9ce

Electronically Signed

Your name: Glen Cacchioli
Signed on: 09/03/2024