

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metro Chemists Pharmacy Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-24-1333-2511
Applicant's File No. 168799
Insurer's Claim File No. 0478971550000003
NAIC No.

ARBITRATION AWARD

I, Anthony Joseph Bianchino, 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 09/03/2024
Declared closed by the arbitrator on 09/03/2024

Aleksey Selipanov, Esq. from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Shanna Nelson, Esq. from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,421.90**, 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 matter involves a motor vehicle accident which occurred on June 4, 2023. As a result of the accident the patient [JL], a 37 year old male, sought medical treatment, which is detailed below.

The issue in dispute is whether the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets the patient received on November 21, 2023 were medically necessary. The Respondent has denied the Applicant's claim based upon an IME by Dr. Pierce Ferriter, which was done on October 9, 2023.

4. Findings, Conclusions, and Basis Therefor

The amount in dispute is \$4,421.90 which is for the Diclofenac gel in the amount of \$2,358.00, the Lidocaine ointment in the amount of \$1,910.00 and the Baclofen tablets in the amount of \$153.90.

This matter falls under Section 65-4.2 (b)(3) of the No-Fault Regulations, "Rocket Docket", as a result all documents submitted by the Applicant at the time of filing and by the Respondent during the conciliation will be considered. In addition, since there was no objection by either the Applicant or the Respondent to any of the additional documents which have been submitted, the additional submissions will also be considered.

This is a motor vehicle accident which occurred on June 4, 2023. As a result of the accident the patient saw NP Hill on June 4, 2023 and June 28, 2023 the patient saw NP Hill. On July 10, 2023, July 17, 2023, July 24, 2023 and July 31, 2023 the patient saw Dr. Li. On November 16, 2023 NP Hill prescribed Diclofenac gel, Lidocaine ointment and Baclofen tablets. On November 21, 2023 the patient received the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets.

It is well settled under New York State No-Fault Law that an Applicant can make a prima facie showing of medical necessity by submitting "...a properly completed claim form, which suffices on its face to establish the "particulars of the nature and extent of the injuries and [health benefits] received and contemplated" (11 NYCRR 65-1.1), and the "proof of the fact and the amount of loss sustained." (Insurance Law section 5102 [a]) See Amaze Medical Supply Inc. a/a/o Johnny Bermudez v. Eagle Insurance Company 784 N.Y.S.2d 918 and Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

The Applicant in support of their claim that the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets received on November 21, 2023 were medically necessary relies upon the NF-3s, the medical reports contained in the ECF and NP's Hills prescriptions.

Based upon the NF-3s, the medical reports and the prescriptions by NP Hill the Applicant has established a prima facie showing that the services in dispute were medically necessary. As such the burden shifts to the Respondent to prove that the services were not medically necessary. The Respondent in support of their position that the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets received on November 21, 2023 not medically necessary relies upon an IME by Dr. Ferriter.

A peer reviewer or IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of the health care provider's services. See Amaze Medical Supply Inc. v. Allstate Ins. Co., 12 Misc.3d 142(A), 2006 N.Y. Slip Op. 51412(U) (App. Term 2d & 11th Dists. July 12, 2006);

Prime Psychological Services, P.C. v. Progressive Casualty Ins. Co., 24 Misc.3d 1244(A), 2009 N.Y. Slip Op. 51868(U) at 3 (Civ. Ct. Richmond Co., Katherine A. Levine, J., Aug. 5, 2009); A.M. Medical Services, P.C. v. Deerbrook Ins. Co., 18 Misc.3d 1139(A), 2008 N.Y. Slip Op. 50368(U) (Civ. Ct. Kings Co., Sylvia G. Ash, J., Feb. 25, 2008).

At the time of the October 9, 2023 IME the patient made complaints of neck pain as well as mid and low back pain. During that IME Dr. Ferriter found the patient to have no spasm or tenderness of the cervical and lumbar spine, full range of motion of the cervical and lumbar spine, a negative Spurling's test, a negative shoulder shrug test, a negative compression test, a negative Jackson's test, a negative Soto-Hall test, full muscle strength in the upper and lower extremities, normal deep tendon reflexes in the upper and lower extremities, normal sensation in the upper and lower extremities, no spasms or tenderness of the thoracic spine, a negative sitting straight leg raise test, a negative supine straight leg raise test, a negative Fabere test, a negative Kemp's test, a negative Minor's sign, a negative Lasegue's test, a normal examination of the right and left shoulder, a normal examination of the right and left elbow, a normal examination of the right and left wrist and hand, a normal examination of the right and left hip, a normal examination of the right and left knee and a normal examination of the right and left ankle and foot. Based upon this IME Dr. Ferriter diagnosed the patient with resolved sprain/ strain of the cervical spine as well as the thoracic and lumbar spine. In addition Dr. Ferriter was of the opinion that the patient did not need continued treatment, including prescription pain medication.

Under the applicable case law I find that both the Applicant and Respondent have satisfied their respective burden with regard to the medical necessity for the services in dispute. As such it must be determined by trier of fact which doctor's opinion is to be given more weight.

Here since the Applicant has not submitted anything at or around the time of the IME which disputes Dr. Ferriter IME findings, which were normal, I give full weight to Dr. Ferriter's findings and opinion that the patient did not need continued treatment. Therefore I find that the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets in dispute were not medically necessary.

Accordingly the Applicant's claim for the Diclofenac gel, the Lidocaine ointment and the Baclofen tablets received on November 21, 2023 is denied.

This is in full disposition of all No-Fault benefit claims submitted to the 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 claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY

SS :

County of Suffolk

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

09/04/2024
(Dated)

Anthony Joseph Bianchino

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:
b652d177c2b1e56466d9141869e5185b

Electronically Signed

Your name: Anthony Joseph Bianchino
Signed on: 09/04/2024