

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Putnam Rx Inc  
(Applicant)

- and -

Geico Insurance Company  
(Respondent)

AAA Case No.	17-23-1293-6055
Applicant's File No.	176.471
Insurer's Claim File No.	0297456990101138
NAIC No.	35882

**ARBITRATION AWARD**

I, Anne Malone, 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: EIP

1. Hearing(s) held on 08/30/2024  
Declared closed by the arbitrator on 08/30/2024

Sakrit Srivastava, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

Jaime Drantch from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,525.49**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended by the applicant to \$1,524.36 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 47 year old EIP reported involvement in a motor vehicle accident on November 2, 2022; claimed related injury and received Lidothal, Meloxicam and Baclofen prescription medication provided by the applicant on January 16, 2023.

The applicant submitted a claim for this prescription medication, payment of which was denied by the respondent based upon a peer review by Don Nicholson, M.D. dated March 7, 2023.

**The issue to be determined at the hearing is whether the respondent established that the topical and oral prescription medication at issue was not medically necessary.**

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

This decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

In order to support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which if established shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1<sup>st</sup> Dept. 2006.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

In support of its contention that the Lidothal, Meloxicam and Baclofen prescription medication provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Nicholson, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him. Dr. Nicholson considered possible arguments and justification for the need for the topical and oral prescription medication at issue and determined that it was not warranted under the circumstances presented.

Dr. Nicholson discussed each of the medications and determined that prescribing these specific medications did not meet the standard of care for the injuries sustained by this particular the EIP.

#### Meloxicam

Dr. Nicholson determined that although NSAIDs for chronic persistent pain are recommended under certain circumstances, the documentation in this case does not reflect that the EIP had contraindications for first line NSAIDS and therefore the Meloxicam prescribed for him was not medically necessary.

#### Baclofen

Dr. Nicholson discussed the standard of care for muscle relaxants which include a short course of therapy and there is limited, mixed evidence of its value for chronic use, which can have potential severe side effects. It was his opinion that it is typically most effective in the acute stages (2 weeks) of neck and low back pain. Since this EIP was not prescribed this medication during the acute stage Dr. Nicholson determined that it was not medically necessary for him.

#### Lidothal

It was Dr. Nicholson's opinion that according to the medical standard of care, topical lidocaine is only indicated where there is documentation of neuropathic pain and that its use for musculoskeletal injury related to a motor vehicle accident does not meet this standard of care. Therefore, it was not medically necessary for this EIP.

Dr. Nicholson supported, with relevant medical literature, his opinion that the oral and topical prescription medication at issue was not medically necessary for this EIP.

Respondent has met its evidentiary burden. The peer review by Dr. Nicholson adequately sets forth the factual basis and medical rationale to support the conclusion that the oral and topical prescription medication at issue was not indicated for this particular EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, who bears the ultimate burden of persuasion to establish that the medical services at issue were medically necessary.

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including the report of the examinations of the EIP by Joseph Martone PA-C on November 7, 2022 and Yahya Shah, PA on January 9, 2023 and which documented positive objective findings. The recommendation was for continued physical therapy, trigger point injections and oral and topical prescription medication.

In this case, the submitted medical records do not meaningfully address the arguments that are raised in the peer review and do not establish that the specific prescription medication at issue was medically necessary for this particular EIP.

Furthermore, since the applicant did not provide a rebuttal to the peer review, it did not respond to the respondent's argument that the prescription medication provided to the EIP was a deviation from a reasonable medical standard of care. The medical records alone are not sufficient to rebut the conclusions of Dr. Nicholson.

Based on the foregoing, I find that the respondent established that the prescription medication at issue was not medically necessary.

**Accordingly, the claim is dismissed with prejudice.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this 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 CT

SS :

County of Fairfield

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

09/05/2024  
(Dated)

Anne Malone

### **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:**  
950b0d48151ac40d8560796347dc54ce

### **Electronically Signed**

Your name: Anne Malone  
Signed on: 09/05/2024