

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.	17-23-1296-0996
Applicant's File No.	177.962
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, **\$3,003.94**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended by the applicant to \$3,003.72 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 49 year old EIP reported involvement in a motor vehicle accident on November 2, 2022; claimed related injury and received Lidothal, Baclofen and Meloxicam prescription medication provided by the applicant on January 21, 2023 and March 15, 2023.

The applicant submitted a claim for this topical and oral prescription medication, payment of which was denied by the respondent based upon a peer review by Dilip Subhedar, M.D. dated March 7, 2023. In response, the applicant submitted a rebuttal dated June 22, 2023 by Pervaiz Qureshi, M.D. who was not the EIP's prescribing or treating medical provider.

Payment for the Baclofen provided by the applicant on January 21, 2023 was made by the respondent and was acknowledged in the AR-1.

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, 11th and 13th 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 1st 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, Baclofen and Meloxicam prescription medication provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Subhedar, who reviewed the medical records of the EIP, noted the injuries claimed and the

treatment rendered to her. Dr. Subhedar 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. Subhedar discussed each of the medications at issue and his determination that none were medically necessary for this particular EIP.

Meloxicam

Dr. Subhedar noted that oral NSAIDs for chronic persistent pain are recommended but generic ibuprofen or naproxen are first line medications and second line medications should include generic medications. He determined that the documentation submitted in this case did not reflect contraindications for first line NSAIDS and therefore, Meloxicam was not medically necessary.

Lidocaine

Dr. Subhedar discussed the medical standard of care for topical lidocaine which is only indicated when there is documented diagnosis of neuropathic pain and determined that the EIP did not meet these criteria because there was no documentation that she experienced this type of pain.

Baclofen

Dr. Subhedar discussed the standard of care for muscle relaxants and noted that they are recommended for a short course of therapy and that chronic use is not recommended due to severe side effects. They are typically most effective during the acute stage of injury. Since the EIP in this instance is beyond the acute time frame the use of Baclofen does not meet the standard of care.

Dr. Subhedar supported, with relevant medical literature, his opinion that the oral and topical prescription medication at issue was not medically necessary for the particular EIP at the time it was provided.

Respondent has factually demonstrated that the topical/oral prescription medication at issue was not medically necessary. Accordingly, the burden now shifts to the applicant, who bears the ultimate burden of persuasion, pursuant to Bronx Expert Radiology, P.C., *supra*.

In opposition to the peer review, the applicant presented a rebuttal by Dr. Qureshi, who reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Subhedar and discussed in detail the injuries sustained by the EIP and the treatment rendered to her.

Dr. Qureshi made specific arguments related to the medical necessity for the each of the oral and topical medications at issue.

Baclofen

Dr. Qureshi noted the arguments of Dr. Subhedar related to this medication and related the need for this medication to the EIP's complaints and objective test findings. He concluded that her condition warranted the prescription of a muscle relaxant, Baclofen in conjunction with a course of conservative treatment.

Dr. Qureshi stated that Baclofen has many applications, one of which is treating musculoskeletal pain. He described the uses and benefits of this medication to treat "muscle symptoms caused by multiple sclerosis, including spasm, pain, and stiffness. Baclofen is sometimes used to treat muscle spasms and other symptoms in people with injury or disease of the spinal cord. Baclofen is primarily used for the treatment of spastic movement disorders, especially in instances of spinal cord injury, cerebral palsy, and multiple sclerosis." He then concluded that therefore, Baclofen tablet prescribed for the EIP was medically necessary in this case.

Lidothal

Dr. Qureshi described the EIP as having signs and symptoms of neuropathic pain based on the objective findings which he determined were sufficient to warrant the prescription of Lidothol film.

He noted that trauma, causing nerve injury, can lead to neuropathic pain and quoted: "Neuropathic pain is thought to be associated with peripheral nerve problems, such as neuropathy caused by diabetes or spinal stenosis, injuries to the brain or spinal cord can also lead to chronic neuropathic pain." He also noted that Lidocaine is valuable medication for management of both acute and chronic pain.

Dr. Qureshi noted that topical pain-relieving patches were effective and safe for the relief of mild to moderate pain attributed to arthritis, neurological conditions, and musculoskeletal disorders. He also described studies that have supported the use of this analgesic pain-relieving patch as a first-line treatment.

Therefore, Dr. Qureshi determined that this topical pain medication was medically necessary for this EIP.

Meloxicam

Dr. Qureshi discussed in detail the risks and benefits of Meloxicam in response to Dr. Subhedar's arguments in the peer review to support his determination that this medication was not medically necessary for this EIP.

Dr. Qureshi determined that this medication was provided to the EIP to reduce her pain and was therefore necessary.

Dr. Qureshi supported with relevant medical citations, his opinion that the oral and topical prescription medication at issue was medically necessary.

The respondent noted that documents cited by the applicant and which were quoted in the rebuttal, were not submitted by the applicant.

After a review of all the evidence submitted an issue of fact remains as to whether the prescription medication provided to the EIP was medically necessary. Conflicting opinions have been presented in the peer review by Dr. Subhedar and the rebuttal by Dr. Qureshi on behalf of the applicant.

In this instance, the rebuttal by Dr. Qureshi sufficiently rebuts the findings of Dr. Subhedar. In addition, the medical reports submitted are sufficient to establish the medical necessity for the prescription medication at issue.

Based on the foregoing, I find that the respondent has failed to establish that the prescription medication at issue was not medically necessary.

Accordingly, the applicant is awarded \$3,003.72 in disposition of this claim.

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 Arb

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
	Putnam Rx Inc	03/15/23 - 03/15/23	\$1,601.57	\$1,601.46	Awarded: \$1,601.46
	Putnam Rx Inc	01/21/23 - 01/21/23	\$1,402.37	\$1,402.26	Awarded: \$1,402.26
Total			\$3,003.94		Awarded: \$3,003.72

- B. The insurer shall also compute and pay the applicant interest set forth below. 04/20/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30th day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 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 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:
1c5b6173fa93da9ad2b5820cce075858

Electronically Signed

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