

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Community Medical Wellness, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-24-1342-7801
Applicant's File No.	24-002452
Insurer's Claim File No.	0651476320000002
NAIC No.	35882

ARBITRATION AWARD

I, Gary Peters, 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 08/23/2024
Declared closed by the arbitrator on 08/23/2024

Jared Mallimo from The Licatesi Law Group, LLP participated virtually for the Applicant

Meghan DiMicili from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$8,233.40**, 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

The Assignor was a 29 year old male who was a restrained passenger in a motor vehicle and involved in an accident on 6/27/23.

Applicant is seeking payment for arthroscopic knee surgery wherein the claim was denied by the Respondent for lack of medical necessity, based on its Independent Peer Review Report and for various fee schedule issues.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using the Electronic Case Folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the record of the hearing and I have reviewed the documents contained therein. Any documents submitted after the hearing or at the hearing that have not been entered in the Electronic Case Folder as of the date of this award, will be listed immediately below this language and forwarded to the American Arbitration Association at the time this award is issued for inclusion.

The Assignor was a 29-year-old male who was involved in a motor vehicle accident on 06/15/2023 as a restrained passenger. He sustained multiple injuries, including injuries to his left knee. Subsequently, the patient came under the care of multiple treatment providers and was placed on a conservative treatment program for his injuries, which included physical therapy and NSAIDs.

MRI study of the Left Knee performed on 06/28/2023 revealed:

- Anterior cruciate ligament sprain sequela.
- Medial collateral ligament (MCL) sprain sequelae.
- Oblique tear of the medial meniscus.
- Small reactive joint effusion with a thickened medial plica and a trace Baker's cyst.
- Moderate insertional quadriceps tendinosis.

The Assignor presented to Dr. Jacob for an examination on 06/27/2023. At the time, he had pertinent complaints of constant, throbbing, catching and aching left knee pain rated at 7/ 10, worsened with activity. He also reported difficulty with walking, ascending stairs, descending stairs, getting up from a chair, standing and functional limitations. Examination of the left knee revealed decreased range of motion; crepitus with flexion and extension; tenderness over medial and lateral joint line, effusion; tibial tenderness; medial and lateral patellar tenderness; positive McMurray's Test and Apley's Grind Test. Diagnoses were: left knee pain and sprain. The patient was recommended physical therapy, medication and follow-up.

On 07/11/2023, he had pertinent complaints of constant, throbbing and aching left knee pain rated at 6/10, worsened with activity. He had received physical therapy. Examination of the left knee revealed decreased range of motion with pain; tenderness over medial and lateral joint line. Neurological examination revealed weakness in left quadriceps. Diagnoses were: left anterior cruciate ligament sprain, left sprain of medial collateral ligament of knee, and other tear of medial meniscus current injury left knee. The patient was recommended for additional physical therapy, medication and follow up.

On 07/25/2023 he was re-evaluated by Dr. Jacob; he had pertinent complaints of constant, throbbing, catching and aching left knee pain rated at 7/10, worsened with activity. He had received physical therapy, NSAIDs, and reported difficulty with kneeling, ascending stairs, descending stairs, getting up from a chair and sitting. Examination of the left knee revealed decreased range of motion with pain; tenderness over medial and lateral joint line. Neurological examination revealed weakness in left quadriceps. Diagnoses were: left knee pain and left derangement posterior horn medial meniscus. The Assignor was recommended left knee arthroscopy, physical therapy, medication and follow up.

The operative report dated 08/28/2023 indicated the procedures performed as left knee arthroscopy, partial lateral meniscectomy, arthroscopic synovectomy of all major compartments of the knee requiring separate incision, coblation arthroplasty of patellofemoral compartment, and arthroscopic removal of loose body greater than 1 cm requiring separate incision. Pre-operative diagnosis was: left knee medial meniscal tear. Postoperative diagnoses were: left knee lateral meniscal tear; synovitis; grade 2 chondromalacia and loose body.

Once an Applicant establishes a prima facie showing, the burden shifts to the Respondent. Respondent's denial for lack of medical necessity must be supported by competent medical evidence setting for a clear and factual basis and medical rationale for denying the claim. Citywide Social Work v. Travelers Indemnity Company, 3 Misc.3d 608 (Civil Court, Kings County, 2004).

To successfully support its denial, the Respondent's Peer Review or I.M.E. Report must address all pertinent objective findings contained in the Applicant's medical submissions and set forth how and why the disputed services were inconsistent with generally accepted medical practices. The conclusory opinions of a peer reviewer, standing alone and without support of medical authorities, will not be considered sufficient to establish the absence of medical necessity (Citywide Social Work v. Travelers Indemnity Company,) Supra; Amaze Medical Supply Inc. v. Eagle Insurance Company, 2 Misc.3d 128A, 784 N.Y.S.2d 918 (App. Term 2d 11th Judicial District).

Where Respondent meets its burden, it is incumbent upon the claimant to rebut the findings and recommendations of the Respondent's reports. The insured/provider bears the burden of persuasion on the question of medical necessity. Specifically, 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 Insurance Company, 8 Misc.3d 1025A).

It is undisputed that the Applicant has established a prima facie case of entitlement to first party benefits by demonstrating it submitted a timely claim setting forth the fact, amount of loss sustained and that payment of the claim has not been made. As stated above, the burden shifts to the Respondent to set forth a clear and factual basis in medical rationale to deny the claim.

On behalf of the Respondent, Dr. Howard A. Kiernan denied the medical necessity of the aforementioned services based on the conclusions in his peer review report. He stated that *it is evident that the treating physician gave an inappropriate treatment recommendation for the left knee arthroscopy, as the left knee symptoms could have easily been resolved with conservative care and additional non-surgical treatment modalities.*

Dr. Jacob stated that there are no specific guidelines delineating the absolute structured path for treatment to be universally prescribed to all patients. Great deference should be given to the treating provider charged with the responsibility to examine, diagnose and treat a patient who presents with symptoms and positive clinical findings. A guideline is not an absolute. It is intended to help the clinician make decisions regarding care based on all of the information presented to her/him for each patient. Each patient must be examined as an individual and the decisions regarding her/his treatment shall be taken based on the clinical presentations at the time of examination .

Dr. Jacob also disagrees with Dr. Kiernan's conclusions, as the Assignor's examination reports dated from 06/27/2023 - 07/25/2023 noted that the patient had failed to improve despite undergoing multiple conservative measures, including physical therapy treatment and NSAIDs; and presented for examination with complaints of constant, throbbing, catching and aching left knee pain rated at 7/10, worsened with activity. The patient was recommended left knee arthroscopy based on his history, physical examination findings confirming symptomatic injured tissue and the MRI images supporting injured pathologic tissue including the fact that the patient's condition had failed to improve with conservative management.

Furthermore, the need for the left knee arthroscopy was based on the fact that the patient suffered traumatic injury to his left knee as a result of a motor vehicle accident and the patient's clinical examination and diagnostic test findings were in fact indicative of left anterior cruciate ligament sprain, left sprain of medial collateral ligament of knee, and other tear of medial meniscus current injury left knee, when the patient had the following subjective complaints and objective findings:

- constant, throbbing, catching and aching left knee pain rated at 7/10, worsened with activity;
- the patient had received physical therapy and NSAIDs:
- the patient also reported difficulty with kneeling, ascending stairs, descending stairs, getting up from a chair and sitting;
- decreased left knee range of motion with pain;
- tenderness over medial and lateral joint line:
- weakness in left quadriceps;

- crepitus with flexion and extension (*If traumatic injury to the knee causes severe pain accompanied by crepitus, then it should be noted that it is due to the damage to the anterior cruciate ligament, or ACL. Knee joint pain with crepitus indicates that the cartilage specific to it is gone, resulting in bone-to-bone interaction in the knee.*) ;
- tibial tenderness;
- medial and lateral patellar tenderness;
- effusion;
- positive McMurray's Test for left knee (indicates torn meniscus);
- positive Apley's Grind Test (or left knee) (indicates torn meniscus);
- anterior cruciate ligament sprain sequela ;
- medial collateral ligament (MCL) sprain sequelae;
- oblique tear of the medial meniscus;
- small reactive joint effusion with a thickened medial plica and a trace Baker's cyst; and
- moderate insertional quadriceps tendinosis.

According to the article 'Meniscus Tears', published by American Association of Orthopaedic Surgeons (AAOS); last reviewed 2021, (Please refer: <https://orthoinfo.aaos.org/en/diseases--conditions/meniscus-tear/>) The most common symptoms of a meniscus tear are:

- Pain
- Stiffness and swelling
- Catching or locking of your knee
- The sensation of your knee giving way
- Inability to move your knee through its full range of motion

The Assignor had the abovementioned highlighted symptoms as recorded in the evaluation reports dated from 06/27/2023 - 07/25/2023. The patient also had positive orthopedic tests of joint line tenderness and McMurray Test.

Additionally, based on the fact that the patient's examination findings were indicative of a meniscal tear (as explained above) and in combination with the fact that, despite conservative treatment, the patient continued to complain of constant, throbbing, catching and aching left knee pain rated at 7/10, with physical examination findings of tenderness, crepitus, effusion, decreased range of motion with pain, and positive orthopedic tests indicating meniscal tear; arthroscopy was absolutely warranted to confirm and treat the meniscal tear. Without treatment, a piece of meniscus may come loose and drift into the joint which can cause the knee to slip, pop, or lock.

Knee arthroscopy is an important diagnostic and therapeutic tool in the management of disorders of the knee. Diagnostic arthroscopy is a crucial skill for diagnosing intra-articular disorders of the knee including meniscal, synovial, ligamentous, and articular cartilage pathology. (Please refer: Ward BD, Lubowitz JH. Basic knee arthroscopy part 3: diagnostic arthroscopy. *Arthrosc Tech.* 2013;2(4):e503-e505. Published 2013 Nov 22; <https://www.ncbi.nlm.nih.gov/pmc/articles/PM4040015/>)

I agree with Dr. Jacob that the citations used by Dr. Kiernan in fact support the instant case as *they recommend knee arthroscopy after failure of non-surgical treatment, which was the case for this patient*. Moreover, Guidelines are used just to direct a patient to the proper treatment modalities. Such guidelines are framed only to assist the practitioners based on the patient's history and the individual patient's exam findings. Ultimately, it is the doctor's responsibility to prescribe or perform the correct treatment modality at the correct time to properly diagnose and treat patients.

Based on the foregoing, taking into consideration the patient's history of the injury, the patient's complaints, and the clinical findings and in accordance with the generally accepted standards of care in the relevant medical community, the left knee surgery and associated services performed on 8/28/23 were medically necessary for this patient. I find that Dr. Jacob clearly has established that the operative procedure was necessary when performed

Lastly, the Respondent maintained that Applicant billed improperly as per an Audit wherein it was stated that the correct sum should be \$5,169.81.

The insurer has the burden of proving that the fees charged were excessive and not in accordance with the Worker's Compensation fee schedule. St. Vincent Medical Care PC v. Countrywide Insurance Company, 26 Misc. 3d 146 (A), 907 NYS 2d 441 (App. Term 2d, 11th and 13th Dists. 2010). If the insurer fails to demonstrate, by competent evidentiary proof, that the claims were excess of the appropriate fee schedule, the defense of noncompliance cannot be sustained. See, Continental Medical PC v Travelers Indemnity Company, 11 Misc.3d 145(a), 819 NYS 2d 847 (App Term 1st Dept. 2006).

Applicant's counsel maintained that the Respondent failed to provide a Fee Code Affidavit and that the Respondent failed to meet its burden of proof. I find that the Audit of Marta Donnelly, certified fee coder was correct despite the fact that the audit was not in form of an affidavit.

Accordingly, Applicant is awarded the sum of \$5169.81

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	Status
	Community Medical Wellness, PC	08/28/23 - 08/28/23	\$8,233.40	Awarded: \$5,169.81
Total			\$8,233.40	Awarded: \$5,169.81

B. The insurer shall also compute and pay the applicant interest set forth below. 04/03/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest to be 2% per month simple, not compounded on a pro rata basis using a 30 day month. Respondent shall compute and pay Applicant interest from the day of filing of arbitration to the date of payment of the 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 fee in accordance with 11 NYCRR 65-4.6(d) or "As this matter was filed on or after February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the Applicant an attorney fee in accordance with the newly promulgated 11 NYCRR 65-4.6(d). This amendment takes into account that the maximum attorney fee has been raised from \$850.00 to \$1360.00

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

09/21/2024

(Dated)

Gary Peters

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:
b7696aa80d8df3fdffe8ebc74f97ae53

Electronically Signed

Your name: Gary Peters
Signed on: 09/21/2024