American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

| | | |
|---|---|---|
| Total Anesthesia Provider, P.C. f/k/a Advanced Anesthesiology of NY, PC (Applicant) | AAA Case No. | 17-24-1340-6685 |
| | Applicant's File No. | n/a |
| | Insurer's Claim File No. | 0562681180101027 |
| - and - | NAIC No. | 22055 |
| Geico Insurance Company (Respondent) | | |

**ARBITRATION AWARD**

I, Aladar Gyimesi, 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 01/16/2025
   Declared closed by the arbitrator on 01/16/2025

   Robert Cippitelli, Esq. from Jakubowitz Law Firm PC participated virtually for the Applicant

   Chad Meyers, Claim's Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$460.86**, 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

   In contention is Applicant's reimbursement request in the total sum of $460.86, with respect to an epidurography performed in connection with cervical epidural steroid injections (hereinafter CESI) rendered on October 25, 2023 by Dr. David Shabtian, relative to a 39 year old male passenger EIP who was involved in a motor vehicle accident on May 5, 2023. Upon receipt of Applicant's reimbursement requests relative to the above, following a peer review on November 17, 2023 by Dr. Jeffry Beer which was rebutted by the Applicant pursuant to Dr. Shabtian's affirmation dated December 10, 2024, Respondent issued a timely denial predicated upon a claimed lack of medical necessity and a general Fee Schedule defense. Contemporaneous thereto, payment in full

was also remitted to the Applicant relative to the CESI in question. Applicant's compensatory demand, in regard to the epidurography, is in dispute. The issue presented is medical necessity.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the pertinent documentation contained within the ADR Center as of the date of the hearing. Any issues contained in the record, not specifically raised at the time of the hearing, are considered by this Arbitrator to be moot and/or waived by the parties. This Award is based upon the oral argument, if any, of counsel and an analysis of the timely submission(s) of the respective parties hereto.

It is appreciated that the peer review and rebuttal tendered herein are collectively somewhat lengthy. While considered in their entirety by this Arbitrator, in my judgment it would be wholly impractical to attempt to summarize all of the contentions/information set forth therein. Thus, what follows is this Arbitrator's assessment as to some of the more salient aspects thereof. Respondent's peer noted the EIP was only referred for CESI after failing a prolonged course of physical therapy and more conservative measures. "This would appear to be an appropriate intervention…" He was of the further view, however, that medical necessity had not been established in regard to epidurography in dispute. He cited an alleged medical authority in support of his claim that "the indications for epidurography include the lack of obvious source of pain pathology which was not present in this case. The pathology responsible for the claimant's symptoms was previously identified with an MRI". Therefore, in light of all of the above, the peer concluded medical necessity had not been demonstrated with regard to the imaging in controversy.

A health care provider will initially establish a prima facie claim of medical necessity by its submission to the No-Fault carrier of an NF-3 form or its equivalent. Countrywide Ins. Co. v. 563 Grand Medical, P.C., 50 A.D. 3d 313, 855 N.Y.S. 2d 439 (App. Div., 1st Dept. - 2008); Mary Immaculate Hospital v. Allstate Ins. Co., 5 A.D. 3d 742, 774 NYS 2d 564 (App. Div., 2nd Dept. - 2008). The No-Fault carrier, however, may rebut the inference of medical necessity by providing proof that the claimed healthcare benefits were not medically necessary. Delta Diagnostic Radiology, P.C. v. Integon Natl. Ins. Co ., 2009 NY Slip Op 51502(U) (App Term, 2nd Dept - 2009). Where the No-Fault carrier's proof consists of a peer review, same must be predicated upon a sufficient factual basis and medical rationale in order to potentially validate the denial of first-party benefits. Elmont Open MRI & Diagnostic Radiology, P.C. v. Geico Ins. Co., 2006 NY Slip Op 51185(U) (App Term, 2nd Dept - 2006); East Coast Acupuncture Servs., P.C. v. American Tr. Ins. Co., 2007 NY Slip Op 50213(U) (App Term, 1st Dept - 2007). If the No-Fault carrier presents sufficient evidence to satisfy its lack of medical necessity defense, the burden then shifts back to the Applicant to present its own evidence of medical necessity. West Tremont Med. Diagnostic, PC v. Geico Ins. Co., 13 Misc. 3d 131[A], 2006 NY Slip Op 51871, (App Term, 2nd Dept - 2005).

After due deliberation, I conclude the aforementioned peer review report was premised upon a sufficient factual basis and medical rationale. Elmont Open MRI and East Coast Acupuncture, supra. I find Respondent has rebutted the presumption of medical necessity, arising by virtue of Applicant's presentation of its billing form, relative to the epidurography in contention. In this matter, however, Applicant has also tendered a rebuttal to the peer review. Dr. Shabtian set forth the EIP's complaints, together with his clinical examination findings, diagnoses and course of treatment recommendations, when the EIP was evaluated on August 9 and October 23, 2023. The EIP's cervical spine MRI study results were also considered. Dr. Shabtian maintained, contrary to the peer's claim, that localizing the source of a patient's pain is not the only indication for the performance of an epidurography. "The service maximized outcome by ensuring accurate and safe delivery of therapeutic medication to the pain generating source". Dr. Shabtian cited one alleged medical authority in support of the need for fluoroscopic guidance, due to "high rate of erroneous needle placement associated with blind techniques", relative to epidural steroid injections. Another alleged medical authority, referenced Dr. Shabtian, concluded that "[e]pidurography in conjunction with epidural steroid injections provides for safe and accurate therapeutic injection and is associated with an exceedingly low frequency of untoward sequelae". An additional alleged medical authority, cited by Dr. Shabtian, stated "our results indicate that both fluoroscopy and contrast injection are necessary for accurate placement of epidural steroid injections". It was lastly observed the New York WCB, Neck Injury, Medical Treatment Guidelines recommend "one epidurogram per series of ESI injections".

I have dutifully reviewed all of the evidence presented herein. I have also carefully considered the inapposite views of Respondent's peer, and Dr. Shabtian, relative to the medical necessity of the epidurography in issue. Following due deliberation, I find the position of the EIP's healthcare provider to be the more persuasive. I do not believe, as ostensibly claimed by the peer, that localization of pain pathology is the only basis for an epidurography. I rather find compelling the contention that an epidurography, administered during the course of a patient's CESI, is a reasonable and prudent safety measure which is apparently widely endorsed by the medical community. I find the rebuttal tendered herein to be convincing. Therefore, following due reflection, I conclude Applicant has sustained its burden of proof, by a fair preponderance of the credible evidence, relative to the medical necessity of the epidurography administered to the within EIP on October 25, 2023. I award Applicant the total requested sum of $460.86 in such a respect.

In the instant matter, Respondent issued a denial(s) and Applicant did not commence this Arbitration proceeding within thirty days after its receipt of the subject denial(s). As a result, interest on the sum(s) awarded herein shall accrue as of the commencement date of the within arbitration. Lastly, attorney's fees shall be calculated against the total, "aggregate", Award. LMK Psychological Servs. P.C. v. State Farm Mutual Ins. Co., 12 NY3d 212, 879 N.Y.S.2d 14 (2009); Office of General Counsel, State of New York Insurance Department, Opinion Letters dated November 30, 2009 and September 14, 2010.

Accordingly, after a careful review of all the evidence and due regard for the argument of counsel, my Award is in favor of the Applicant. I find Applicant has satisfied its

burden of proof with respect to the medical necessity of the reimbursement request in controversy. Consequently, I award Applicant the total sum of $460.86 in full satisfaction of the claim presented.

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** |
|---|---|---|---|---|
| | **Total Anesthesia Provider, P.C. f/k/a Advanced Anesthesiology of NY, PC** | **10/25/23 - 10/25/23** | **$460.86** | **Awarded: $460.86** |
| **Total** | | | **$460.86** | **Awarded: $460.86** |

B. The insurer shall also compute and pay the applicant interest set forth below. 03/18/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Pursuant to No-fault Regulation 65-3.9(a), where the underlying motor vehicle accident occurred after Apr. 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month.

The end date for the calculation of the period of interest shall be the date of Respondent's payment to the Applicant of the Award herein. In calculating the interest, pursuant to General Construction Law §20, the date of accrual shall be excluded from the calculation. Absent any credible proof as to Respondent's actual receipt of an NF-3 or its practical equivalent, or of Applicant's actual receipt of Respondent's denial, pursuant to CPLR §2103(b)(2) it is presumed that Respondent received Applicant's NF-3 or its practical equivalent, and/or that Applicant received Respondent's denial, five days after same was mailed and the "submission" date or "received" date, as hereinafter set forth, reflect such computations.

As to the date that Applicant's interest claim accrued, pursuant to LMK Psychological, supra, I find as follows:

Pursuant to No-fault Regulation 65-3.9(c), interest shall be paid, on the total sum of $460.86 from 3/18/24, the date the arbitration was commenced.

C. Attorney's Fees

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

Pursuant to LMK Psychological Services P.C., P.C. v. State Farm Mutual Ins. Co., 12 NY3d 212, 879 N.Y.S2d 14 (2009), Opinion Letter of the Office of General Counsel of the State of New York Insurance Department dated October 8, 2003 and No-fault Regulation §65-4.6, I find that Respondent is obligated to pay Applicant an attorney's fee as set forth below:

Twenty percent of the total Award of $460.86, plus interest. Such a fee is not to exceed, under ordinary circumstances, the sum of $850 nor be less than a minimum fee of $60 if the instant claim was submitted to the AAA prior to 2/4/15. If the subject claim was

submitted to the AAA subsequent to the aforementioned date, the attorney's fee shall be twenty percent of the total Award, plus interest, with no minimum fee and a maximum fee of $1,360.

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 Rockland

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

01/24/2025
(Dated)

Aladar Gyimesi

**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:**
c50724a96e9d4358c83fae96319bd033

**Electronically Signed**

Your name: Aladar Gyimesi
Signed on: 01/24/2025