

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Mid-Rockaway Ave Medical PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-25-1381-1072
Applicant's File No.	161777
Insurer's Claim File No.	8737335500000002
NAIC No.	22055

ARBITRATION AWARD

I, Susan Mandiberg, 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: The EIP

1. Hearing(s) held on 07/02/2025
Declared closed by the arbitrator on 07/02/2025

Robin Grumet, Esq. from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Jaime Drantch, Claim Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$3,389.43**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the time of the Hearing, Applicant's counsel amended the total amount in dispute to the sum of \$2,470.51, which comports with Respondent's Fee Schedule calculation.

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

3. Summary of Issues in Dispute

The 44-year-old male EIP was a passenger in a vehicle that was involved in the instant motor vehicle accident on 4/21/23. Presently in dispute is billing for physical therapy treatment performed from 6/24/24 through 10/17/24, respectively. Respondent timely

denied reimbursement for this billing premised upon an 8/29/23 IME exam conducted by Howard A. Kiernan, M.D., after which Respondent terminated benefits effective 9/16/23. The issue to be determined is whether the billing in dispute was medically necessary vis-à-vis the IME exam upon which Respondent's denials rely. As amended, no Fee Schedule issues were raised, nor were any policy exhaustion issues interposed regarding this billing.

4. Findings, Conclusions, and Basis Therefor

This case was decided after due consideration of the arguments of the parties and after a thorough review of the submissions and the documents contained in the electronic case folder maintained by the American Arbitration Association, which are incorporated by reference herein. This case involves physical therapy treatment performed from 6/24/24 through 10/17/24 respectively. The billing was generated following a motor vehicle accident that took place on 4/21/23. Respondent timely denied reimbursement for this billing premised upon an 8/29/23 IME exam conducted by Howard A. Kiernan, M.D., after which Respondent terminated benefits effective 9/16/23.

Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5, an Arbitrator shall be the judge of the relevance and materiality of the evidence offered...The Arbitrator may question any witness or party and independently raise any issue that the Arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. In addition, Master Arbitrator Peter J. Merani, in the case of Sports Medicine & Ortho. Rehab. a/a/o "I.B." v. Country-Wide Ins. Co., AAA Case No. 17-R-991-14272-3, stated, in relevant part, that "the Arbitrator below is the trier of facts and must evaluate and weigh the evidence presented at the hearing in arrive at his decision. The Arbitrator, in weighing the evidence, has broad powers and discretion in determining what evidence is relevant and material. The Arbitrator is in the best position to evaluate the evidence and decide on the credibility of the submitted documents." Furthermore, it is within the province of an arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. See: *Mott v. State Farm*, 55 NY2d 224 (1982).

It is well-settled that a health care provider establishes its prima facie entitlement to judgment as a matter of law by proof that it submitted a claim, setting forth the fact and the amount of the loss sustained, and that payment of No-Fault benefits was overdue. *Damadian MRI in Canarsie, PC a/a/o Tyrone Harley v. General Assurance Co.*, 1006 NY Slip Op. 51048U; Supreme Court of NY, App. Term., 2nd Dept., June 2, 2006; See: Insurance Law §5106 a, *Mary Immaculate Hosp. v. Allstate Ins. Co.*, 5 AD3d 742, 774 N.Y.S.2d 564 (2004); *Amaze Med. Supply v. Eagle Ins. Co.*, 2 Misc. 3d 128A, 784 N.Y.S.2d 918 [2003 NY Slip Op 51701U (App. Term, 2nd & 11th Jud Dists.)]. See also: 11 NYCRR §65-1.1, *Vista Surgical Supplies, Inc. v. Metropolitan Prop. and Cas. Ins. Co.*, 2005-1328 K C., 2006 NY Slip Op. 51047U, June 2, 2006. Based upon the evidence submitted, I find that Applicant has established its prima facie case.

As discussed with the parties at the time of the hearing, this case is linked to a prior arbitration Award that involved the same EIP, for services rendered by this same Applicant provider, who was represented by the same counsel, following the same motor vehicle accident. In the prior case, the services were also denied premised upon the same IME exam, as in the instant matter, which was found to be persuasive. See: AAA Case number 17-24-1347-8940. In the prior award, this Arbitrator held, in relevant part:

"The 44-year-old male EIP was a passenger in a vehicle that was involved in the instant motor vehicle accident on 4/21/23. Presently in dispute is billing for physical therapy treatment performed from 9/21/23 through 4/17/23, respectively. Respondent timely denied reimbursement for this billing premised upon an 8/29/23 IME exam conducted by Howard A. Kiernan, M.D., after which Respondent terminated benefits effective 9/16/23...

... The evidence demonstrates that the 44-year-old male EIP was a passenger in a vehicle that was involved in the instant motor vehicle accident on 4/21/23. Following the accident, the EIP received emergent treatment at Jamaica Hospital and was discharged later that day. Thereafter, the EIP sought medical care for injuries sustained in this accident and came under the care of Dr. Tutu, among other providers. In addition to treatment with physicians, the EIP also pursued a course of physical therapy, chiropractic treatment, and acupuncture. The EIP was reevaluated periodically by his providers, and underwent diagnostic testing, including MRI scans, and EMG/NCV testing. The EIP underwent left knee surgery on 6/1/23 and received lower back injections. All the relevant medical reports, documents and treatment notes were reviewed and considered.

Respondent timely denied reimbursement for the above-noted billing premised upon the 8/29/23 orthopedic IME exam conducted by Howard A. Kiernan, M.D. At the time of the IME, the EIP complained of pain in the back, bilateral hips, and left knee, respectively. In addition to examining the EIP, Dr. Kiernan also reviewed the EIP's medical records and reports. Range of motion measurements were taken utilizing a goniometer and were calibrated pursuant to the American Medical Association "Guidelines to the Evaluation of Permanent Impairment," Fifth Edition. The EIP's examination revealed normal/full ranges of motion. All of the objective/provocative tests performed demonstrated normal findings. Based upon the findings of exam, Dr. Kiernan diagnosed the EIP as status post left knee surgery, healed; and resolved sprains/strains. Therefore, Dr. Kiernan concluded that there was no need for further orthopedic treatment, with no need for household help, massage therapy, surgery, injections, prescription medications, special transportation, ambulance/ambulatory services, durable medical equipment, or diagnostic testing.

The burden is on the insurer to prove that the medical services were unnecessary. See: Behavioral Diagnostics v. Allstate Ins. Co., 3 Misc. 3d 246, 776 N.Y.S.2d 178, 2004 Slip Op. 24041 (Civ. Ct. Kings County 2004); A.B. Medical Services v. Geico Ins., 2 Misc. 3d 26, 773 N.Y.S.2d 773, 2003 Slip Op 23949 (App Term, 2nd Dept 2003). See also: Elm Medical P.C. v. American Home Assurance Co., 2003 Slip Op. 51357U 2003

N.Y. Misc. LEXIS 1337 (Civ. Ct., Kings Co., 2003); Fifth Ave. Pain Control Ctr. v. Allstate Ins. Co., 196 Misc. 2d 801, 766 NYS2d 748 (Civ. Ct., Queens Co., 2003). Indeed, a denial claiming lack of medical necessity must be supported by a peer review, IME report or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. See: Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc3d 975; Citywide Social Work, et al. v. Travelers Indem. Co., 3 Misc3d 608. See also: Amaze Medical Supply, Inc. v. Eagle Ins. Co., 2 Misc3d 128(A). Thereafter, the burden shifts back to Applicant to present competent medical proof as to the continuing medical necessity for care by a preponderance of the credible evidence. West Tremont Medical Diagnostic, P.C. v. Geico, 13 Misc.3d 131[A], 824 N.Y.S.2d 759 (Table), 2006 N.Y. Slip Op. 51871(U), 2006 WL 2829826 (App. Term 2nd & 11th Jud. Dists. 9/29/06), A. Khodadadi Radiology, P.C. v. N.Y. Cent. Mut. Fire Ins. Co., 16 Misc. 3d 131[A], 841 N.Y.S.2d 824, 2007 WL 1989432 (App. Term 2nd & 11th Dists. 7/3/08). Per Insurance Law Section 5102, the burden of proof rests with the Applicant.

In the instant matter, after a review of the totality of the evidence, I find that the medical necessity of the billing in dispute has been credibly rebutted by the IME report upon which Respondent's denials rely. Although Applicant relies upon the 7/19/23 EMG/NCV testing and exam report, a review of these documents, in my opinion, fails to credibly refute the detailed IME report of Dr. Kiernan. Such documents were generated over a month prior to the IME exam, and, in my opinion, fail to credibly rebut the findings therein. This finding would remain unchanged even if, *arguendo*, Applicant's late evidence, consisting of a report dated 8/10/23, was considered. Such document fails to reveal a detailed evaluation, as compared to the IME upon which Respondent relies, nor is there an IME rebuttal in evidence to consider. In sum, after a thorough review of the totality of the credible evidence, and for the reasons set forth herein, I find that the IME report is, on balance, more persuasive than Applicant's evidence. I therefore find that Respondent's denials premised upon this IME should be sustained.

Accordingly, this claim is denied."

The above-cited Award upheld the same IME upon which the instant denial relies, for services rendered after the IME termination date by this very same Applicant provider. As such, the prior Award was rendered after consideration of the same IME report and involved the identical issue of medical necessity as in the instant matter *vis-à-vis* services rendered following this same IME exam. Moreover, review of the evidence submitted in this case reflects that is substantially the same as the evidence presented in the prior above-cited case. I therefore find that the doctrine of collateral estoppel is applicable to the billing presently in dispute. According to Black's Law Dictionary, sixth ed., 1990, the doctrine of collateral estoppel is defined as follows: "Prior judgment between the same parties on different cause of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered" (Citation omitted). Furthermore, the doctrine of collateral estoppel precludes a party from re-litigating in a subsequent action or proceeding, an issue that was raised in a prior action or proceeding and decided against that party, whether or not the tribunals or causes of action are the same. See: *Ryan v. New York Telephone*, 62 N.Y.2d 494, 478 N.Y.2d 823. In addition, the Court of Appeals has held that the doctrine of collateral

estoppel "is applicable to issues resolved by earlier arbitration. See: Rembrandt Industries v. Hodges International, 38 N.Y.2d 592, 381 N.Y.S.2d 383. Furthermore, it is within the Arbitrator's authority to determine the preclusive effect of a prior arbitration. See: Matter of Falzone v. New York Cent. Mut. Fire Ins. Co., 64 A.D.3d 1149, 881 N.Y.S.2d 769 (4th Dept. 2009).

In the instant matter, the identical issue regarding the medical necessity of treatment rendered by this same Applicant provider, following the IME cutoff date - premised upon the same IME - was decided in the above-noted Arbitration Award. In addition, it has been held that the doctrines of res judicata and collateral estoppel apply to Arbitration Awards, "including those rendered in disputes over no-fault benefits, and will bar re-litigation of the same claim or issue." Furthermore, the court held that "a judgment in one action is conclusive in a later one...when the two causes of action have such measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first..." See: Matter of Ranni, 58 N.Y.2d 715, 458 N.Y.S.2d 910 (1982); Monroe v. Providence Wash. Ins. Co., 126 A.D.2d 929, 511, N.Y.S.2d 449 (3rd Dept. 1987). Herein, the prior determination, vis-à-vis this Applicant provider is the "law of the case." As discussed at the time of the Hearing, there is also a linked case that discounted this IME, however, that case concerned a different Applicant provider, who was represented by different counsel, and whose evidence was significantly different than that which is provided herein. Moreover, it is determined that the evidence in this case does not substantiate an award overturning the findings of the IME.

Irrespective of the foregoing, this Arbitrator reviewed the substantive evidence proffered in the instant matter. After careful review of the totality of the credible evidence, I find that the IME report upon which Respondent's denials were premised credibly contests Applicant's prima facie case of medical necessity for the instant billing, based upon the evidence submitted in this matter. There are no contemporaneous examination reports or medical records generated at/about the time of this IME, that, in my opinion, credibly contest the IME exam, nor is there is no IME rebuttal, or similar such evidence. In sum, after review of the credible evidence and for the reasons set forth herein, I find that the unrefuted IME report is more persuasive than Applicant's evidence. Therefore, I find that Respondent's denials should be sustained.

Accordingly, this claim is denied.

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 Nassau

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

07/03/2025
(Dated)

Susan Mandiberg

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:
11860b547486f4f3e947da5395af714d

Electronically Signed

Your name: Susan Mandiberg
Signed on: 07/03/2025