
In the Matter of the Arbitration between:

Premier Neuromed Services / Applicant_1 (Applicant)	AAA Case No.	412010022411
- and -	AAA Assessment No.	17 991 12949 10
Geico Insurance Company (Respondent)	Applicant's File No.	
	Insurer's Claim File No.	0177030830101022

ARBITRATION AWARD

I, Maria G. Schuchmann, Esq., 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: Claimant

1. Hearing(s) held on

☒ 08/11/10

and declared closed by the arbitrator on 8/11/10.

April Mittleman, Esq participated in person for the Applicant.

Bob Pollack participated in person for the Respondent.

2. The amount claimed in the Arbitration Request, \$3,450.86, 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

Whether upper and lower extremity EMG and NCV testing performed on Claimant as a result of injuries allegedly sustained in a motor vehicle accident were medically necessary.

4. Findings, Conclusions, and Basis Therefor

Claimant was involved in a motor vehicle accident on September 8, 2009. On September 21, 2009 she saw Dr. Sedani complaining of neck pain radiating bilaterally into her sides, pain in her mid back, low back pain radiating into her right lower extremities, and pain in her left shoulder, and tingling and numbness in her left foot. After an examination that was positive for decreased cervical and lumbar ranges of motion with spasm, hyporeflexia in the upper extremities on the right side, hypoaesthesia on the right at C6 and C7, and on the left at L5

and S1 and positive foraminal compression, Soto Hall, Kemps, Straight Leg Raise and other orthopedic tests, Claimant was referred for MRIs, therapy and EMG/NCV studies.

Claimant was seen in follow-up on October 5th and reported no improvement and showed no change on examination.

Based upon that, she was scheduled for upper and lower EMG and NCV studies which were performed on October 19, 2009 and showed a right C6 radiculopathy.

After that, she underwent lower extremity testing on December 7th, which was normal.

Respondent has denied payment for the upper extremity testing based upon a peer review by Dr. Cohen that found that the tests were not medically necessary. In that report he maintained that EMGs should not be used to diagnose a radiculopathy. Rather, they should be used to rule out other diseases. In addition, there was nothing to show that the results of the tests did anything to alter claimant's treatment plan.

After a review of the evidence I have to disagree. Clearly, the use of EMG and NCV studies has become the "gold standard" in the diagnosis of radiculopathy (as well as other nerve-involved conditions). So to say that in this case it should not be used to evaluate for radiculopathy without more, is insufficient. In addition, the medical records indicate that, based upon the test results Claimant's treatment plan was altered.

Respondent has denied payment for the lower extremity testing based upon a peer review by Dr. Einberg. In that report he maintains that Dr. Sedani's December 7th examination was deficient and, when testing based upon a deficient exam, the results will be useless.

However, in reading the report it becomes apparent that he was referring to the Letter of Medical Necessity submitted by Dr. Sedani, instead of the actual narrative that contains many more details. For instance, Dr. Einberg states that there were no objective neurological abnormalities. The December 7th report, however, notes hypoaesthesia on the left at L4, L5 and S1 with a positive Straight Leg raise. In rendering his opinion without review of the more complete narrative report, Dr. Einberg was not considering the complete clinical picture. Therefore, his opinion is weightless.

After a review of all of the evidence presented, I find that the testing at issue was medically necessary. Respondent has failed to show that Applicant failed to act within the boundaries of accepted medical practice and that the tests were not medically necessary.

Accordingly, Applicant is awarded \$3,450.86 plus applicable interest computed from May 11, 2010. Applicant is also awarded statutory attorneys fees on the amount awarded herein plus the interest as well as return of the filing fee.

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.

Accordingly, the applicant is AWARDED the following:

A.

Benefits	Amount Claimed	Amount Awarded
Health Service Benefits	3,450.86	3,450.86
Totals:		\$3,450.86

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/11/2010, which is a relevant date only to the extent set forth below.)

Applicant is awarded \$3,450.86 plus applicable interest computed from May 11, 2010.

- C. Attorney's Fees

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

Applicant is also awarded statutory attorneys fees on the amount awarded herein plus the interest.

- 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 New York
SS :
County of Suffolk.

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

8/12/10
(Dated)



(Maria G. Schuchmann, Esq.)

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.