
In the Matter of the Arbitration between:

Advanced Billing Associates, Inc / Applicant_ I (Applicant)	AAA Case No.	412012091911
	AAA Assessment No.	17 991 66543 12
	Applicant's File No.	
- and -		
Geico Insurance Company (Respondent)	Insurer's Claim File No.	0303383720101017

ARBITRATION AWARD

I, Jeffrey A. Held, 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:Eligible Injured Person "EIP"

1. Hearing(s) held on

03/08/13

and declared closed by the arbitrator on 3/21/13.

Naomi Cohn, Esq., of counsel to Gene Sigalov Esq. participated in person for the Applicant. Robert Zerrenner participated by telephone for the Respondent.

2. The amount claimed in the Arbitration Request, **\$3,500.29**, 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 Applicant, as assignee of the EIP, a 43-year old female with a history of a May 24, 2010 motor vehicle accident, has established entitlement to reimbursement of claim for health service benefits, continuous passive motion device (CPM) machine and pad, timely denied based an IME cutoff.

4. Findings, Conclusions, and Basis Therefor

Pursuant to 11 NYCRR 65-4.5 (o)(1), 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.

This award is rendered based upon the documents that appear in the electronic case folder, as well as the arguments and concessions made at the time of the hearing. There were no witnesses at the hearing. The case was heard with a linked claim, decided herewith.

Succinctly stated, in dispute is a bill in the amount of \$3,500.29 covering a CPM unit and pad for dates of service December 8, 2010 through January 6, 2011, prescribed by David T. Newman, MD as part of a treatment plan for the EIP, a 43-year old female with a history of a May 24, 2010 motor vehicle accident. The EIP, a belted driver at the time of the accident, sustained multiple injuries therein, including, inter alia, sprain/strains to the back, right shoulder and right knee culminating a treatment plan that included, inter alia, right shoulder arthroscopy on November 23, 2010. The supplies at issue were prescribed as part of the treatment/recovery plan following said surgical procedure.

The claim was denied in a concededly timely manner based upon an IME cutoff effective September 8, 2010. The cutoff was set based upon an orthopedic and chiropractic/acupuncture IME performed on September 1, 2010 by Drs. Passick and Goldin, respectively.

At the time of the aforesaid IMEs, the EIP reported complaints, inter alia, of lower back pain, right shoulder and right knee pain. Examination findings were remarkable, inter alia, for cervical, right shoulder and right knee tenderness and decreased range of motion of the right shoulder (chiropractic/acupuncture IME) and lumbar tenderness and decreased range of motion of the right shoulder (orthopedic IME). The consensus impression included, inter alia, sprains/strains/contusions of the cervical, lumbar, right shoulder and right knee; each described as “resolved.”

A rebuttal/peer review/letter of medical necessity was submitted by Applicant from Dr. Dassa, who relies, in part, on the history, positive IME findings, and pertinent supply guidelines in the formulation of his opinion.

The prescribed endorsement in NYCRR, title 11, Section 65-1 (Regulation 68) entitled “Conditions” states, in part, that “The eligible injured persons shall submit to medical examinations by physicians selected by, or acceptable to, the Company, when, as often as, the Company may reasonably require.”

Based upon the totality of the evidence before me, I find that while the Respondent acted reasonably in scheduling the EIP for the aforesaid IMEs, the cutoff which it issued based upon the IME reports cannot be sustained on this hearing record. To that end, the IME reports contain positive examination findings that are inconsistent with the conclusion/impression that is reached by the IME doctors, to wit: that the EIP’s injuries were resolved. Further, I find that Dr. Dassa’s rebuttal is persuasive on this issue.

In such posture, I find that Respondent’s denial, while timely, must nevertheless be overruled on the ground that same is not supported by preponderance of the credible evidence.

I note that Respondent conceded at the hearing that no fee schedule defense is being pursued.

Award for Applicant in the amount of \$3,500.29 plus interest and attorney's fees, in accord with LMK Psychological Services PC v. State Farm Mutual Auto Insurance Company, 12 N.Y. 3d 217, 879 N.Y.S. 2d 14 (2009), and as computed as per opinion letter of the Office of General Counsel of the NY Insurance Department No. 3-10-04 [Oct. 2003]. Applicant is further awarded return of 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	3,500.29	3,500.29
Totals:		\$3,500.29
		\$3,500.29

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 08/10/2012, which is a relevant date only to the extent set forth below.)

The interest rate shall be 2% per month, simple, on a pro rata basis using a 30 day month. The insurer shall compute and pay Applicant from August 10, 2012 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.

In accordance with 11 NYCRR 65-4.6 (e), and subject to the provisions of 11 NYCRR 65-4.6 (b), the insurer shall pay Applicant an attorney's fee based upon 20 percent of the total amount of first party benefits awarded in this proceeding plus interest, subject to a maximum of \$850, with a minimum of \$60.

- 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 New York.

I, Jeffrey A. Held, 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.

5/2/13
(Dated)



(Jeffrey A. Held, 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.