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In the Matter of the Arbitration between:

AR Physical Therapy & PTA PLLC /  
**Applicant\_ 1**  
(Applicant)

- and -

**Geico Insurance Company**  
(Respondent)

AAA Case No. 412010022555  
AAA Assessment No. 17 991 13615 10  
Applicant's File No.  
Insurer's Claim File No. 0108214110101142

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### 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, **\$1,047.20**, 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 is entitled to reimbursement for physical therapy from October 9, 2008 through May 6, 2008 performed on Claimant as a result of injuries allegedly sustained in a motor vehicle accident.

4. Findings, Conclusions, and Basis Therefor

Claimant was involved in a motor vehicle accident on July 29, 2008. On August 12, 2008 he saw Dr. Hausknecht complaining of neck pain radiating into his shoulders and upper back and pain and numbness in his right wrist, arm and hand. After an examination that was

positive for decreased cervical ranges of motion with tenderness and weakness in his right shoulder, arm, wrist and hand, Claimant was referred for physical therapy.

Respondent has denied payment for these services based upon Claimant's failure to attend independent medical exams.

The issue of IMEs is dealt with in Section 65.12 of the No-Fault Regulations that states as follows:

“Action against Company. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.”

This Section then goes on to state:

“the eligible injured person shall submit to medical examinations by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.”

However, Respondent has not submitted any evidence to show that the appointment letters were even properly mailed. The only thing submitted was a form statement from Empire Stat that merely noted the appointments and Claimant’s failure to attend. See, Stephen Fogel Psychological p.c. v Progressive Casualty Ins Co., (2006 NY Slip Op 09604) that held that, before a Respondent can assert a defense based upon Claimant’s failure to attend requested independent medical exams, proof in admissible form must be proffered by the insurer to establish the defense. The proof must be by one with personal knowledge “of the mailings or of the nonappearances”. In this case, no such proof was offered and, strangely, Claimant failed to appear without explanation.

After a review of all of the evidence, I find that Applicant is entitled to reimbursement for the services at issue. Based upon the evidence submitted it is not clear that these scheduling letters were ever properly mailed.

Accordingly, Applicant is awarded \$1,047.20 plus applicable interest computed from May 12, 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	1,047.20	1,047.20
<b>Totals:</b>	\$1,047.20	\$1,047.20

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/12/2010, which is a relevant date only to the extent set forth below.)

Applicant is awarded \$1,047.20 plus applicable interest computed from May 12, 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.*