

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Jacobson Chiropractic PC
(Applicant)

AAA Case No. 17-16-1026-5243
Applicant's File No.

- and -

National Liability & Fire Insurance Company
(Respondent)

Insurer's Claim File No. 0375589660
NAIC No. 20052

ARBITRATION AWARD

I, Lucille S. DiGirolomo, 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: Assignor

1. Hearing(s) held on 02/07/2017
Declared closed by the arbitrator on 02/07/2017

Cathryn Roberts, Esq. from the Law Office of Gene Sigalov Esq. participated in person for the Applicant

Jonathan J. Oxenberg Esq. from the Law Office of Jonathan J. Oxenberg Esq. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,408.76**, 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 dispute is Applicant's billing totaling \$2,408.76 for an office visit and pf-NCS testing.

Whether Respondent's denials based on a fraudulent procurement of policy and the Assignor's failure to appear for scheduled physical examinations can be sustained.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center as of the date of the hearing in this matter and have considered all pertinent documents contained therein for the purpose of rendering this award. The parties did not make any additional submissions on the hearing date.

The claim herein arises from a motor vehicle accident that occurred on July 7, 2015.

Applicant billed \$78.20 for an office visit on August 4, 2015 and \$2,330.56 for upper and lower pf-NCS testing performed on the same date. Respondent timely denied this billing on the following grounds:

Entire no-fault claim denied based on the fraudulent procurement of policy. The Examination under Oath of [Assignor] and our SIU investigation revealed the injured person was involved in an alleged fraudulent scheme to procure the subject insurance policy in order to pay reduced insurance premiums. [Assignor] also failed to appear to the Ortho-Surgical physical exams on 8/27/15 and 09/10/15.

Respondent argues that the Assignor used a Saranac Lake, New York address to procure the policy of insurance when he never lived there. Respondent submits an SIU report dated August 18, 2015 wherein the investigator advises he went to the Saranac Lake address and spoke to an occupant of Apartment No 2 of the premises who resided there since February 2015. The occupant advised he had no knowledge of the Assignor and verified the occupant of the first floor apartment, allegedly rented by the Assignor was, in fact, occupied by a different named individual who was a pilot at the local airport and who had resided there since February of 2015. The SIU investigator then interviewed the landlord at the Saranac Lake address and was notified there was no record of the Assignor ever renting or residing at the premises. The SIU report gives the names of the occupants of all four apartments at the premises and none were occupied by the Assignor. A signed statement from the occupant of Apartment No. 2 is also submitted attesting to the above.

Respondent also submits a transcript of an Examination Under Oath conducted of the Assignor on August 26, 2015. He testified that he resided on Amboy Street in Brooklyn, New York and did so for about a year. He lived there with his mother and grandmother and helped with the rent payments. [T.p.5-6]. Prior to that he lived on Lott Street in Brooklyn for about one year with his mother and grandmother. [T.p. 6-7] Prior to that he resided in Bakersfield California for a year. [T.p.8]. Assignor testified that he never lived in Saranac lake. He planned on moving there for school that would start in September but he never got a chance to because of the accident. [T. 31-32].

It is clear from the EUO testimony and the SIU investigation that the Assignor never lived at the Saranac Lake address used to procure the policy of insurance. Applicant's counsel argues that he planned to live there and that was sufficient to overcome a fraudulent scheme to procure insurance at a reduced premium. I disagree.

As stated by the Court in [Cliffside Park Imaging v Preferred Mut. Ins. Co., 36 Misc. 3d 155\(A\), 960 N.Y.S.2d 49, 2012 N.Y. Misc. LEXIS 4357, 2012 NY Slip Op 51754\(U\), 2012 WL 3984598 \(N.Y. App. Term 2012\)](#)

The standard for determining residency for purposes of insurance coverage requires something more than temporary or physical presence and requires at least some degree of permanence and intention to remain" ([Vela v Tower Ins. Co. of NY, 83 AD3d 1050, 1051, 921 N.Y.S.2d 325 \[2011\]](#), quoting [Matter of Allstate Ins. Co. v. \[Rapp\], 7 AD3d 302, 303, 776 N.Y.S.2d 285 \[2004\]](#)). The mere intention to reside at certain premises is not sufficient (see [Vela v Tower Ins. Co. of NY, 83 AD3d at 1051](#)).

Accordingly, the denial is sustained.

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 New York
SS :
County of Queens

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

02/09/2017
(Dated)

Lucille S. DiGirolomo

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:
c6e9df9f9bdf31f147b1c8852e6b2dea0

Electronically Signed

Your name: Lucille S. DiGirolomo
Signed on: 02/09/2017