

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Health First Physical Therapy P.C.  
(Applicant)

- and -

Hereford Insurance Company  
(Respondent)

AAA Case No. 17-15-1005-0098

Applicant's File No.

Insurer's Claim File No. 49739-02

NAIC No.

### ARBITRATION AWARD

I, Tara Maher, 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: EIP

1. Hearing(s) held on 10/05/2015, 05/10/2016, 10/31/2016,  
03/20/2017  
Declared closed by the arbitrator on 03/20/2017

Matt Viverito, Esq. from Costella & Gordon LLP participated in person for the Applicant

Melissa Brooks, Esq from Law Offices of Rubin & Nazarian participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 4,180.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in dispute was amended to 862.40 to reflect 14 dates of service for physical therapy @ 61.60.

Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that the respondent's denials were timely and that the amount in dispute as amended conforms to the proper fee schedule.

### 3. Summary of Issues in Dispute

Whether applicant is entitled to no fault benefits for physical therapy provided to the EIP between 10/28/14 and 3/7/15 following his involvement in a motor vehicle accident on 5/6/14.

### 4. Findings, Conclusions, and Basis Therefor

I have reviewed the ADR case center record maintained by the American Arbitration Association. The findings below are based upon documents reviewed in the case record and the parties' respective positions at the hearing.

Pursuant to the Regulations, the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to the legal rules of evidence shall not be necessary. The arbitrator may question any party or witness or raise any issues that she deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

It is well settled that the health care provider establishes its prima facie entitlement to no-fault benefits under article 51 of the Insurance Law by offering proof that it submitted documentation setting forth the particulars of the claim to the insurer and that payment of same is overdue. See *Mary Immaculate Hospital v. Allstate Insurance Company.*, 5 AD3d 742(2nd Dept. 2004); *Amaze Medical Supply v. Eagle Insurance.* 2 Misc 3d 128A, 784 NYS2d 918, 2003 N.Y. Slip Op 5170IU (App. Term, 2d & 11th Jud. Dist]. I find that applicant has met its prima facie burden.

Applicant's assignor is a 39 year old male involved in a motor vehicle accident on 5/6/14. As a result of the accident, claimant sustained injuries to his back. Assignor had a history of a prior surgery for scoliosis. Following the subject accident, he began a regimen of physical therapy. The subject claim as amended is for 14 dates of physical therapy performed @61.60 as per fee schedule.

The claim was denied on the orthopedic IME of Dr. Alexios Apazidis performed on 9/17/14 with an effective termination of benefits on 10/27/14. The examination revealed painful limited range of motion of the lumbar spine on all planes of movement. Dr. Apazidis opined claimant sustained lumbar spine sprains, exacerbation of pre-existing condition. He did not opine it had resolved.

When there is an issue of possible exacerbation of a prior injury, the respondent has a heavy burden under *Mount Sinai Hospital v. Triboro Coach, Inc.*, 263 A.D.2d 11, 699 NYS 2d 77 (2nd Dept. 1999). In that case, the Court stated that if an injury was entirely

pre - existing it was not covered, but if the injury was in whole or in part the result of an insured accident, then it is covered, and the resolution of that issue requires recourse to the medical facts.

Upon careful review of the credible evidence as contained in the records before me, I find the evidence favors applicant as a matter of fact. The credible evidence establishes claimant remained symptomatic and in need of further care in the post-IME denial period claimed. In as much as respondent has failed to sustain its burden, the claim is granted.

Applicant is awarded \$862.40.

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 applicant is AWARDED the following:

A.

| <b>Medical</b>                                | <b>From/To</b>                 | <b>Amount</b>     | <b>Status</b>                |
|---|--------------------------------|-------------------|------------------------------|
| <b>Health First Physical Therapy<br/>P.C.</b> | <b>10/28/14 -<br/>03/07/15</b> | <b>\$4,180.00</b> | <b>Awarded:<br/>\$862.40</b> |
| <b>Total</b>                                  |                                | <b>\$4,180.00</b> | <b>Awarded:<br/>\$862.40</b> |

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 02/10/2015, which is a relevant date only to the extent set forth below.)

Interest is awarded from the date of filing for all timely denied claims and from the 30<sup>th</sup> day of presentment of the bill to the carrier for all claims not processed within the statutory 30-day time period. Interest on all awarded claims is to be paid at the rate of two percent per month, not compounded, on a pro-rata basis.

- C. Attorney's Fees

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

Having been filed **before** February 4, 2015, the insurer shall pay the applicant an attorney's fee, in accordance with 11 NYCRR 65-4.6(e). However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

- 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 Nassau

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

03/25/2017  
(Dated)

Tara Maher

**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:**  
23afeed11c6d7934756e8ee9cfe444d6

**Electronically Signed**

Your name: Tara Maher  
Signed on: 03/25/2017