

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

MDAX Inc.  
(Applicant)

- and -

Liberty Mutual Insurance Company  
(Respondent)

AAA Case No. 17-16-1035-8822  
Applicant's File No.  
Insurer's Claim File No. LA000-031736307-03  
NAIC No. 36447

### ARBITRATION AWARD

I, Susan Haskel, 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 03/13/2017  
Declared closed by the arbitrator on 03/13/2017

Walter Pizzary, Esq. from The Law Offices of Hillary Blumenthal P.C. participated in person for the Applicant

Alan Zysberg from Liberty Mutual Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,117.16**, 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

#### Background

On March 18, 2015, EIP was a then 35 year old female passenger of a vehicle involved in a motor vehicle accident. Following the accident, EIP complained of injury to the lumbar spine. EIP sought and received treatment including durable medical equipment ("DME") provided on date of service April 9, 2015. Respondent argues that it never received a bill for the cervical traction unit ("CTU"). Respondent contends that all remaining charges were paid.

#### Issues Presented

The issues in dispute were whether one of the bills was sent, and as to the remaining bills, whether Respondent has remitted payment.

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

This award was decided on the basis of the arguments raised at the hearing and the documents submitted to the electronic case file as of the date of the hearing.

##### Charges neither Paid nor Denied

Respondent takes the position that Applicant did not invoice Respondent for charges related to the CTU. In support of its position, Respondent has submitted the affidavit of Vina Lee, a litigation specialist. Applicant has submitted proof of mailing in the form of a postmarked ledger. The ledger shows various mailings for different injured parties, with an entry for charges of \$492.73 related to EIP. The post stamp is for mailing on May 12, 2015. I have considered the submissions and find the proof of mailing sufficient to establish timely mailing of the bill for the CTU.

The parties next dispute the value of the CTU. Applicant invoiced Respondent \$492.73 for the CTU. Respondent argues that this is above the amount allowable under the New York State Workers' Compensation Fee Schedule ("Fee Schedule"). Per the detailed analysis of Beth Palisin, RN, BSN, CPC, the proper amount for the unit is \$189.95 based upon the rental charges to the general public. Respondent has submitted a number of Arbitration Awards finding that this is the proper value for the CTU. See Award in AAA Case No. 17-14-1002-8897 (Arb. Keenan); 17-14-9049-2386 (Arb. Skelton); 412013097500 (Master Arb. D'Ammora) Applicant argued at the hearing that Ms. Palisin's opinion is faulty because she is assuming that the equipment was rented. Applicant's counsel, however, could not point to any evidence that the item was purchased in this case, nor was Applicant's counsel able to otherwise justify the \$492.73 charge. I find that Ms. Palisin's persuasive Fee Schedule analysis has not been meaningfully rebutted or refuted by Applicant in this instance. I therefore reduce the amount awarded to \$189.95.

##### Credit for Payment

As to all of the charges, Respondent established at the hearing that it remitted full payment to Applicant. I therefore find that Applicant is not entitled to payment for the DME other than the CTU.

#### 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>MDAX Inc.</b> | <b>04/09/15 -<br/>04/09/15</b> | <b>\$1,117.16</b> | <b>Awarded: \$189.95</b> |
| <b>Total</b>     |                                | <b>\$1,117.16</b> | <b>Awarded: \$189.95</b> |

B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 05/27/2016, which is a relevant date only to the extent set forth below.)

Interest on the amount awarded shall run from 35 days from Applicant's proof of mailing of its bill to the date payment is made.

C. Attorney's Fees

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

The insurer shall pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(d).

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

03/28/2017  
(Dated)

Susan Haskel

### **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:**  
a41192339687e5bd090ee863875a7df4

**Electronically Signed**

Your name: Susan Haskel  
Signed on: 03/28/2017