

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Ethos Acupuncture, PC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-17-1064-9215

Applicant's File No. GS-534820

Insurer's Claim File No. 3203069R0

NAIC No. 25143

**ARBITRATION AWARD**

I, James Hogan, 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 09/28/2018  
Declared closed by the arbitrator on 09/28/2018

Joseph Padrucco from Law Offices Of Gabriel & Shapiro, LLC. participated in person for the Applicant

Michael Soriano from Bruno Gerbino & Soriano LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,070.30**, was AMENDED and permitted by the arbitrator at the oral hearing.

**At the hearing, the Applicant amended its claim to \$732.30 to be in accordance with the fee schedule.**

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP, a 33 year old male, was injured in a collision on 11/30/16. This claim is for acupuncture services provided to the EIP by the Applicant as follows:

12/28/16 - 1/27/17 Init. Acu. Session billed under CPT code 97810 at \$29.99 and 3

Additional acupuncture sessions each billed under CPT code 97811 at \$25.68. The total billing for each of the 4 DOS was \$107.03 each.

**The total amount of the Applicant's claim is \$1,070.30.**

**At the hearing, the Applicant amended its claim to \$732.30 to be in accordance with the fee schedule.**

It is the position of the Respondent that the EIP was not a passenger in the State Farm vehicle at the time of the subject loss and therefore was not an "eligible injured party." Therefore, no coverage is available to him.

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

This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.

#### **SUMMARY OF THE CASE:**

The EIP, a 33 year old male, was injured in a collision on 11/30/16. This claim is for acupuncture services provided to the EIP by the Applicant as follows:

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**At the hearing, the Applicant amended its claim to \$732.30 to be in accordance with the fee schedule.**

It is the position of the Respondent that the EIP was not a passenger in the State Farm vehicle at the time of the subject loss and therefore was not an "eligible injured party." Therefore, no coverage is available to him.

As per 11 NYCRR 65-4.2(b)(3)(iv) "Any additional submissions may be made only at the request or with approval of the arbitrator." As per the Initiation Letter, the parties were to have their respective positions uploaded on or before 7/24/17. "Documents received after this date will be marked 'late submission' and may not be considered by

the arbitrator." Respondent has uploaded a Supplemental Submission on 8/10/17. This Supplemental Submission was uploaded later without permission of the arbitrator. However, since it was uploaded more than 1 year prior to the hearing, **I will exercise my discretion and consider it.**

**Applicant's submission:**

The Applicant has provided a copy of its billing. (see above)

The Applicant's submission also contains an AOB signed by the EIP in favor of the Applicant and dated 11/30/16.

**On 11/30/16, the EIP had an Initial Acupuncture Examination at the Applicant.** He advised that he was involved in a motor vehicle accident on 11/30/16 and presented with complaints of pain in the neck, upper back, middle back and lower back.

After the examination, the Western Diagnostic Impression was: 1) cervicalgia; 2) thoracic pain; 3) lumbar pain; 4) muscle spasm.

The report indicates that acupuncture treatment at the rate of 2-3 times per week was prescribed.

The Applicant has provided copies of acupuncture progress notes dated 12/28, 12/29 and 12/30/16 in addition to acupuncture treatment notes dated 1/12, 1/13, 1/19, 1/20, 1/25, 1/26 and 1/27/17.

The Applicant has provided proof of mailing of the Applicant's billing for DOS 12/28/16 - 1/12/17 to the Respondent on 12/3/17. In another Affidavit, Applicant demonstrated that its mailing of the EIP's billing for DOS 1/13/17 through 1/27/17 was mailed to the Respondent on 2/10/17. The affidavits indicate that the billing was mailed to the Respondent at PO Box 106107, Atlanta, GA, 30348-6107. The affidavits of mailing are signed by Christopher Barbaro, who swears that the items listed were deposited at the post office located at 3300 Park Ave., Wantagh, NY 11793.

**Respondent's submission:**

The Respondent's position is that the EIP was not an occupant of the State Farm vehicle at the time of the accident. As such, he does not qualify as an "eligible injured party."

Respondent has provided a copy of the Applicant's billing.

Respondent has provided a copy of the police accident report. Report indicates that the EIP was the operator of a 2014 Chevrolet which was registered to Elvivo Perreira of 41-45 105 Street, Queens, NY. The vehicle as a Virginia registration # VPR 4998. The EIP is listed as the operator with a date of birth of 8/15/83. There is no insurance code indicated for this vehicle.

The other vehicle involved in the accident was a 2004 Ford sedan owned and operated by Lawrence Cunningham. There is no insurance code indicated for this vehicle.

The please report contains a brief description of how the accident happened..

**In Respondent's Supplemental Submission:**

**Respondent has submitted an affidavit from Lisa Chaparos, a Claims Specialist in the employ of the Respondent.**

She has been employed by the Respondent since 1998 and is familiar with its standard office procedures including those involving New York PIP benefits. She has reviewed the documents associated with the instant claim. She discusses the system for the receipt of mail and entering same into the State Farm filing system.

I see that on page 5 of her affidavit, there is a footnote that says "Documents that are created by State Farm through the ECS system that are not related to the claims being handled by the Special Investigative Unit are mailed from two (2) different locations. Documents with the return mailing address PO Box 106170, Atlanta, GA 30348 are mailed from Lincoln, Nebraska and the documents with return mailing address PO Box 106107, Atlanta, GA 30348 or mail from Balston Spa, New York."

Ms. Chaparos says that State Farm's investigation found that the EIP was not an occupant of the State Farm vehicle at the time of the loss. It attempted to conduct an EUO of the EIP.

In paragraph 12 of her affidavit, Ms. Chaparos says: "State Farm had no obligation to deny Applicant's claims due to the fact that Applicant's assignor was not in the State Farm insured vehicle at the time of loss. State Farm has another insurance policy covering the vehicle owned by Lawrence Cunningham, but [The EIP] was not in that vehicle at the time of the loss.

**FINDINGS:**

The Applicant has established its prima facie case.

This claim is for acupuncture services provided to the EIP by the Applicant as follows:

12/28/16 - 1/27/17 Init. Acu. Session billed under CPT code 97810 at \$29.99 and 3

Additional acupuncture sessions each billed under CPT code 97811 at \$25.68. The total billing for each of the 4 DOS was \$107.03 each.

It is the position of the Respondent that the EIP was not a passenger in the State Farm vehicle at the time of the subject loss and therefore was not an "eligible injured party." Therefore, no coverage is available to him.

In support of his position, the Respondent has provided a copy of the police accident report and an affidavit from Lisa Chaparos, a Claim Specialist with the Respondent.

After reviewing the documentation contained in the file, I have concluded that the EIP was not an occupant of the Respondent's vehicle and therefore, the Respondent had no obligation to provide first party benefits.

The claim is denied.

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 Suffolk

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

10/01/2018  
(Dated)

James Hogan

**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:**  
a8a86808d8a68f8bfa203ccd316a90d6

### **Electronically Signed**

Your name: James Hogan  
Signed on: 10/01/2018