

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

LM General Insurance Company
(Respondent)

AAA Case No. 17-18-1098-7697
Applicant's File No. 2133771
Insurer's Claim File No. LA000-035797999-01
NAIC No. 36447

ARBITRATION AWARD

I, Deepak Sohi, 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 11/20/2019
Declared closed by the arbitrator on 11/20/2019

Neda Melamed from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Charles Schreier from LM General Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 241.67**, was NOT AMENDED at the oral hearing.
Stipulations WERE made by the parties regarding the issues to be determined.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its bills. The parties also stipulated that Respondent's NF-10 denial of claim form weretimely issued.

3. Summary of Issues in Dispute

This arbitration arises out ofoffice visitsprovided to the EIP, a34-year-old female, who was involved in a motor vehicle accident as a driver on

7/3/2017. Applicant is seeking reimbursement for the office visits provided to the EIP on dates of service 4/13/2018 and 6/1/2018. Respondent denied reimbursement for the office visits based on the EIP's failure to appear for two scheduled Independent Medical Examination (IME) appointments.

4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the parties as contained in the Electronic Case Folder (ECF) maintained by the American Arbitration Association and the oral arguments of the parties' representatives at the hearing. No witnesses testified at the hearing. I reviewed the documents contained in the ECF for both parties and make my decision in reliance thereon.

IME NO-SHOW

OFFICE VISITS

DATES OF SERVICE 4/13/2018 & 6/1/2018

Pursuant to 11 NYCRR 65-1.1, Conditions, "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". Further, the Regulations state "the eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company when, and as often as, the Company may reasonably require." The appearance at an IME is a condition precedent to the insured liability on the policy, and an insurer may deny a claim retroactively to the date of loss for an [Assignor's] failure to attend IMEs, "when, and as often as, the [insurer] may reasonably require". Stephen Fogel Psychological, P.C., v. Progressive Cas. Ins. Co., 35 AD3d 720 (2nd Dept., 2006).

An insurer makes its prima facie showing of the defense by demonstrating that two separate requests for IMEs were mailed to the assignor and that the Assignor failed to appear for the examination on either scheduled date pursuant to the requests. Apollo Chiropractic Care, P.C. v. Praetorian Insurance Company, 27 Misc.3d 139(A), 2010 N.Y. Slip Op. 50911(U) (1st Dept. 2010).

Respondent's denials are based upon the EIP's failure to appear for two Independent Medical Examination (IME) appointments scheduled for 11/3/2017 and 11/30/2017. In support of these denials, Respondent submitted two IME scheduling letters, an affidavit from Dave Cosio vice-president from Respondent's IME vendor, MedSource National, attesting to the office practices and procedures with regard to the mailing of the IME letters herein, and affirmations from the medical doctors, Dr. Raymond Shebairo, MD and Dr. Frank D. Oliveto, MD, who were scheduled to perform the IMEs attesting to the EIP's non-appearance at the IME appointments on the scheduled dates and times.

It is uncontroverted that the EIP did not appear for the IME appointments as scheduled. Applicant does not allege that the EIP appeared at either of the scheduled IME appointments. Further, Applicant has not set forth any reason why the IME notices were not complied with, nor has Applicant set forth any evidence that the notices were untimely or not addressed properly. Accordingly, based upon the facts of this matter, I find, by a preponderance of the evidence, the EIP failed to appear for the scheduled IMEs in violation of the policy conditions.

Accordingly, in light of the foregoing, based on the arguments of counsel, and after thorough review and consideration of all submissions, I find in favor of the Respondent and the Applicant's claim is denied with prejudice.

This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator. Any further issues raised in the hearing record are held to be moot and/or waived insofar as not raised at the time of the hearing.

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 Nassau

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

11/23/2019
(Dated)

Deepak Sohi

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:
a68e879f750fa5550d62d13a6e7b2743

Electronically Signed

Your name: Deepak Sohi
Signed on: 11/23/2019