

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

New York Spine Specialists
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-18-1103-5905

Applicant's File No. 2130051

Insurer's Claim File No. 0415750397
2AY

NAIC No. 29688

ARBITRATION AWARD

I, Jeffrey Silber, 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 12/04/2019
Declared closed by the arbitrator on 12/04/2019

Marcy Cohen, Esq. from Israel, Israel & Purdy, LLP (Great Neck) participated in person for the Applicant

Peter Graziano, Esq. from Law Offices Of Karen L Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 92.98**, 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

The medical necessity of continuing treatment following respondent's physical examination of a then sixty-five-year-old male three months following the subject accident.

4. Findings, Conclusions, and Basis Therefor

The case was decided on the submissions of the Parties as contained in the ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

The EIP, VV, a 65 year old male was involved in a motor vehicle accident on June 1, 2016. The EIP was treated for his injuries related to the MVA. Applicant has submitted claims for reimbursement for medical treatments provided to the EIP on 6/7/18. Respondent denied the claims based upon an IME.

Applicant establishes a prima facie case of entitlement to reimbursement of its claim by the submission of a completed NF-3 form or similar document documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004). I find that Applicant established a prima facie case.

The burden now shifts to respondent to establish a lack of medical necessity with competent medical evidence which sets forth a clear factual basis (specifics of the claim) and medical rationale for denying the claim. *Citywide Social Work and Psych Services, PLLC v. Allstate*, 8 Misc. 3d 1025A (2005); *Healing Hands Chiropractic v. Nationwide Assurance Co.*, 5 Misc. 3d 975 (2004).

Applicant argues that this issue has already been decided by Arbitrator K. Rybacki in a prior decision. Applicant asserts that in Case Number 17-17-1065-4086, Arbitrator Rybacki rendered an award involving the same EIP, Applicant, Respondent and defense.

Applicant argues that the prior decision was rendered in favor of Applicant. Applicant argues that I must follow the prior decision under the doctrine of collateral estoppel.

In that prior award, Arbitrator Rybacki stated "I find from the proof adduced at the hearing of this matter that applicant rebutted the showing made by the respondent that further treatment of the assignor was not medically necessary. Applicant documented continuing sequela from the insured's original injuries through examinations and evaluation proximate to that performed by the respondent. The findings were also corroborated by electrodiagnostic testing of the cervical and lumbar spines performed proximate to the date of the examination by respondent and opinion evidence was provided indicating the need for the treatment in issue."

Based upon the foregoing, I find that the prior award has collateral estoppel effect as the identical issue was raised in the prior matter and there was a full and fair opportunity to contest the prior award which is now controlling. See, *Buechel v. Bain*, 97 N.Y.2d. 295 (2001). The Applicant maintains that, under the doctrine of collateral estoppel, the Respondent is barred from a re- hearing on this issue. The doctrine of collateral estoppel mandates that a party may not reassert an issue that has been determined in a prior

arbitration, whether or not the tribunals or causes of action are the same. See *Ryan v. New York Telephone*, 62 N.Y. 2d 494 (1984). Issues previously resolved in arbitration are also subject to the doctrine of collateral estoppel. See, *Rembrandt Industries, Inc. v. Hodges International, Inc.*, 38 N.Y. 2d 502 (1976). In order to invoke this doctrine, the following criteria must be met: the issue must be identical to that which was previously litigated; it requires that the parties had a full and fair opportunity to contest the decision; and it must be decisive of the instant action. See, *Gilberg v. Barbieri*, 53 N.Y. 2d 285 (1981). Upon careful consideration, I conclude that the aforementioned criteria have all been met, inasmuch as the issue is identical to that which was previously arbitrated; the Respondent had a full and fair opportunity to participate; and the prior decision is decisive of the within action. Any other result would be illogical.

Accordingly, for the reasons delineated above, I find in favor of the Applicant and direct the Respondent to issue reimbursement in full, plus interest, an attorney's fee and the arbitration filing fee, as outlined in Sections A through D below.

This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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.

Medical		From/To	Claim Amount	Status
	New York			

	Spine Specialists LLP	06/07/18 - 06/07/18	\$92.98	Awarded: \$92.98
Total			\$92.98	Awarded: \$92.98

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/11/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 08/11/18 (the filing date for this case) until the date that payment is made at two percent per month, simple interest, on a pro rata basis using a thirty day month.

C. Attorney's Fees

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

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D): There is an attorney fee of 20% of benefits plus interest, with no minimum fee and a new maximum fee of \$1360.00.

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

12/04/2019
(Dated)

Jeffrey Silber

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:
81e7b7a4da3a81f054ecfd63f3813e35

Electronically Signed

Your name: Jeffrey Silber
Signed on: 12/04/2019