

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

EIS Med Express Inc (Applicant)	AAA Case No.	17-18-1110-5668
- and -	Applicant's File No.	SS-85427
	Insurer's Claim File No.	18-5209732
Progressive Casualty Insurance Company (Respondent)	NAIC No.	24260

ARBITRATION AWARD

I, Charles Blattberg, 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: Eligible injured person

1. Hearing(s) held on 04/15/2020
Declared closed by the arbitrator on 04/23/2020

Greg Itingen, Esq. from Samandarov & Associates, P.C. participated by telephone for the Applicant

Raymond Mak, Esq. from McCormack, Mattei & Holler participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 2,912.00**, 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 claimant was a 31 year-old female who was involved in a motor vehicle accident on 2/17/18. Following the accident the claimant suffered injuries which resulted in the claimant seeking treatment. At issue is the 7/1/18-8/14/18 rental fee for a sustained acoustic medicine (SAM) unit with coupling patches provided by Applicant.

4. Findings, Conclusions, and Basis Therefor

Based on a review of the documentary evidence, this claim is decided as follows:

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 Applicants established a prima facie case for reimbursement.

The claimant was a 31 year-old female who was involved in a motor vehicle accident on 2/17/18. The claimant reportedly injured her neck, bilateral shoulders, upper back, mid back, and lower back. There was no reported loss of consciousness. There were no reported lacerations or fractures. There was no reported emergency treatment sought or received. On 2/23/18 the claimant presented to Frida Molines (degree unspecified) of New York Pain Management Group and was prescribed medications and recommended for MRIs (cervical spine, bilateral shoulders, and lumbar spine) and to continue physical therapy and chiropractic treatment. On 2/23/18 the claimant was prescribed durable medical equipment (DME) consisting of a massager, lumbar orthosis with sagittal control, foam rubber mattress, overbed table, electric moist heat pad, back cushion, and a cervical pillow. On 3/15/18 Bhupinder S. Sawhney, M.D. of BS Kings County Medical, P.C. conducted cervical plexus (upper) and lumbosacral plexus (lower) pf-NCS testing. On 5/22/18 Joseph Raia, M.D. of Preferred Medical, P.C. performed an examination preliminary to EMG/NCV testing and conducted upper extremities and lower extremities EMG/NCV testing performed the same day that produced normal studies. On 6/11/18 Conrad Cean, M.D. of New York Pain Management Group prescribed the use of a sustained acoustic medicine (SAM) unit with coupling patches. There is no medical report in evidence by Dr. Cean associated with this prescription. At issue is the 7/1/18-8/14/18 rental fee for the SAM unit with coupling patches provided by EIS Med Express, Inc. (Applicant).

The \$998.00 bill for dates of service (DOS) 7/1/18-7/11/18 and the \$928.00 bill for DOS 7/30/18-8/14/18 were timely denied based on "Our investigation reveals that the patient is not an eligible injured party. It is our position that the patient has violated Part VII the General Provisions of this policy regarding misrepresentation that is a condition precedent for coverage to be in effect. Therefore, we will not be making any voluntary payment with respect to the claim. Additionally, we do not cover claims presented with fraud. Your request for payment is being denied." The \$986.00 bill for DOS 7/13/18-7/29/18 was timely denied based on "This PC is unlawfully incorporated in violation of NY's Business Corporation Law and other laws of the State of NY; has engaged in unlawful fee-splitting and misrepresented itself as properly licensed. All no fault billing for services rendered are denied."

DOS 7/1/18-7/11/18 and 7/30/18-8/14/18

Respondent asserts in their written submission: "Progressive's investigation into the claim revealed that there was a serious question as to whether the insured fraudulently

misrepresented her address on her insurance policy to secure a lower monthly premium. Progressive's investigation of [the claimant] revealed the following basis to deny her claims for Fraud and Misrepresentation regarding her residency and the Progressive vehicle's garaging location: An Accurint search of [the claimant] indicates that her voter registration is linked to a Brooklyn, NY address and not to the policy address in Schenectady, NY. [The claimant]'s phone numbers are also registered in Brooklyn, NY. [The claimant] submitted a paystub from "Maple Leaf Daycare" based in Schenectady, NY, as proof of her residency at the policy address. Progressive reached out to the Maple Leaf Daycare which confirmed that [the claimant] was never an employee at that company. Furthermore, the payroll company listed on the alleged paystub has never been used by Maple Leaf Daycare, and the name of the company had changed from "Maple Leaf Daycare" to "Maple Leaf Childcare" about 10-15 years ago. John Moran, who is the V.P. of Operations of Maple Leaf Childcare advised Progressive that they have contacted the Guilderland Police Dept regarding this issue, and they have filed case # 18118126 with Officer Tallman. Please refer to Exhibit "C" for a copy of the email from John Moran to Progressive, along with the alleged paystub submitted by [the claimant]. License Plate searches of the Progressive vehicle returned 134 hits from 6/10/17 to 2/26/18, all of which were in Brooklyn, NY. All 23 tickets issued to the Progressive vehicle from 8/16/17 to 2/28/18 were also in the downstate New York City area. When Progressive explained the possible need for an examination under oath (hereinafter "EUO") of [the claimant], she became concerned that the EUO would be conducted in the Schenectady, NY area. However, when Progressive advised her that the defense firm is located on Long Island and can conduct the EUO in the downstate New York City area, she was more comfortable. Progressive's investigation revealed that [the claimant] was garaging the Progressive vehicle at an address other than the one disclosed on her policy. The garaging address as represented by [the claimant] was 1517 Chrisler Ave, Schenectady, NY 12303. However, the evidence uncovered by Progressive's investigation indicates that the Progressive vehicle was primarily garaged in Brooklyn, NY. Therefore, [the claimant] materially misrepresented the actual garaging location of the Progressive vehicle and affected Progressive's risk and the acceptance of that risk. Accordingly, her claims were properly denied for fraud and misrepresentation." It is also noted that according to the police report the claimant gave her address as "325 East 21 Street, Brooklyn, NY 11226" and not the registration address that the police report notes as "1517 Chrisler Ave, Schenectady, NY 12303." Respondent maintains that the claimant knew her statements were false. Respondent also submitted policy documents and set forth in their written submission that the claimant's misrepresentation induced Respondent "to issue the policy on terms and conditions that Progressive would not have issued, had [the claimant] not made the misrepresentation."

In AAA Case No.: 17-18-1101-2464 this Arbitrator was presented with same eligible injured person, the same Respondent, and the same issue of fraud in the procurement; but a different Applicant (there Preferred Medical, P.C. and 5/22/18 EMG/NCV testing was at issue). There this Arbitrator held: "*After independently reviewing Respondent's extensive evidence, this Arbitrator is persuaded that the claimant engaged in intentional material misrepresentations in the procurement of the subject policy as a resident of Schenectady, NY.*" This Arbitrator arrived at the same conclusion in AAA Case No.: 17-18-1096-2697 and AAA Case No.: 17-18-1099-2288. Respondent uploaded

substantially the same evidence here that what was submitted in AAA Case Nos.: 17-18-1101-2464, 17-18-1096-2697 and AAA Case No.: 17-18-1099-2288. To the extent that some portion of evidence may not have been uploaded here I find myself constrained by my previous determinations. In addition, Applicant here has not submitted any substantive evidence that would permit this Arbitrator to arrive at a different conclusion.

DOS 7/13/18-7/29/18

This \$986.00 bill was timely denied based on "This PC is unlawfully incorporated in violation of NY's Business Corporation Law and other laws of the State of NY; has engaged in unlawful fee-splitting and misrepresented itself as properly licensed. All no fault billing for services rendered are denied." Respondent submitted no evidence to support this defense and Respondent's counsel was unable to provide a sufficient explanation of it at the time of the hearing. I also note that the defense of fraudulent policy procurement could not be applied to this bill as that defense must be raised in a timely denial form. In *Empire State Medical Supplies v. Sentry Ins.*, 55 Misc.3d 130(A), 2017 N.Y. Slip Op. 50403(U) (App. Term 2d, 11th & 13th Dists. Mar. 31, 2017), it was held that if the insurer fails to establish that it timely denied the subject claim, the defense that the insured had procured the insurance policy based upon material misrepresentations is precluded.

Accordingly, Applicant is awarded \$986.00.

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
	EIS Med Express Inc	07/01/18 - 07/11/18	\$998.00	Denied
	EIS Med Express Inc	07/13/18 - 07/29/18	\$986.00	Awarded: \$986.00
	EIS Med Express Inc	07/30/18 - 08/14/18	\$928.00	Denied
Total			\$2,912.00	Awarded: \$986.00

- B. The insurer shall also compute and pay the applicant interest set forth below. 11/04/2018 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest runs from 11/4/18 (the date that arbitration was requested) 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

Pursuant to 11 NYCRR §65-4.6 (d), ". . . the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant for arbitration or court proceeding, subject to a maximum fee of \$1,360."

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

05/26/2020
(Dated)

Charles Blattberg

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:
d39dbfabd313070688862812094a90d6

Electronically Signed

Your name: Charles Blattberg
Signed on: 05/26/2020