American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Spine & Pain Consultant, PLLC (Applicant)	AAA Case No.	17-20-1175-0110
	Applicant's File No.	A26763
- and -	Insurer's Claim File No.	0486823410101099
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Aaron Maslow, 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: Assignor ["KM"]

1. Hearing(s) held on 02/01/2021
   Declared closed by the arbitrator on 02/01/2021

   Ashley Andrews-Santillo, Esq., from Munawar & Hashmat LLP participated by telephone for the Applicant

   Shaquana Johnson, Esq., from Geico Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **$ 2,672.69**, was AMENDED and permitted by the arbitrator at the oral hearing.

   Applicant withdrew without prejudice a bill for date of service June 6, 2019. A $957.36 bill for date of service June 20, 2019 was reduced to $595.50. A $64.07 bill for date of service May 9, 2019 remained at that amount. Altogether the revised amount in dispute was $659.57.

   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 two bills remaining in dispute. They also stipulated that Respondent's Form NF-10 denial of claim forms appurtenant to those two bills were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law

§5106(a) and 11 NYCRR 65-3.8(a)(1). Additionally, they stipulated that should Applicant prevail, interest would accrue as of the date that the American Arbitration Association received Applicant's arbitration request.

3. Summary of Issues in Dispute

- Whether Applicant established entitlement to No-Fault insurance compensation for an office visit of May 9, 2019 and cervical facet joint ablations of June 20, 2019 performed to treat Assignor.

- Whether Respondent made out a prima facie case of lack of medical necessity based on an IME cutoff of further benefits and, if so, whether Applicant rebutted it.

- Whether to apply collateral estoppel against Applicant on the issue of medical necessity from a prior award of mine.

4. Findings, Conclusions, and Basis Therefor

Appearances

For Applicant:

Munawar & Hashmat LLP
P.O. Box 4563
New York, NY 10163-4563
By: Ashley Andrews-Santillo, Esq.

For Respondent:

Law Office of Goldstein, Flecker & Hopkins
2 Huntington Quadrangle
Melville, NY 11747
By: Shaquana Johnson, Esq.

In this New York No-Fault insurance arbitration, Applicant seeks as compensation $659.57 for an office visit performed on May 9, 2019 and cervical facet joint injections performed on June 20, 2019. These medical services were performed to treat Assignor, a 44-year-old female who was injured in a motor vehicle accident on March 7, 2018. Respondent denied payment of the two bills at issue (one for each date of service) on the ground of lack of medical necessity, relying upon an IME cutoff of benefits imposed effective Sept. 16, 2018. There are no longer any fee issues due to Applicant's reduction in the amount sought (see above).

This arbitration was organized by the American Arbitration Association, which has been designated by the New York State Department of Financial Services to coordinate the mandatory arbitration provisions of Insurance Law § 5106(b), which provides:

> Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party ["No-Fault insurance"] benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

Both parties appeared at the telephone hearing by counsel, who presented oral argument and relied upon documentary submissions. I have reviewed the submissions' documents contained in the American Arbitration Association's ADR Center as of the date of the hearing, said submissions constituting the record in this case.

The parties stipulated that Applicant established a prima facie case of entitlement to No-Fault compensation with respect to its two bills remaining in dispute. They also stipulated that Respondent's Form NF-10 denial of claim forms appurtenant to those two bills were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1).

At the hearing, Respondent argued that the subject services should be found not medically necessary based on the doctrine of collateral estoppel from a prior award of mine. In AAA Case No. 17-20-1156-4907 (Dec. 27, 2020), in an arbitration commenced by Applicant involving medical services provided to Assignor from March 12, 2019 to May 9, 2019, I sustained the IME report of Dr. Rajmani Krishnan, who examined Assignor on Sept. 5, 2018. The cutoff of benefits was imposed effective Sept. 16, 2018. On page 5 of my award, I wrote, "Rather it was Respondent who proved lack of medical necessity for further treatment." Dr. Krishnan's IME report serves as the basis for Respondent's defense herein of lack of medical necessity.

"Under the doctrine of collateral estoppel, a party is precluded from relitigating an issue which has been previously decided against it in a prior proceeding where it had a full and fair opportunity to litigate the issue (*see D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659 [1990]). 'The two elements that must be satisfied to invoke the doctrine of estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue (*see Kaufman v. Lilly Co.* [65 N.Y.2d 449, 455 (1985)])' (*Luscher v. Arrua,* 21 AD3d 1005, 1007 [2005]). 'The burden is on the party attempting to defeat the application of collateral estoppel to establish the absence of a full and fair

opportunity to litigate' (*D'Arata*, 76 N.Y.2d at 664; *see also Kaufman*, 65 N.Y.2d at 456)." Uptodate Medical Service, P.C. v. State Farm Mutual Automobile Ins. Co., 22 Misc.3d 128(A), 2009 N.Y. Slip Op. 50046(U) at 2 (App. Term 2d & 11th Dists. Jan. 9, 2009).

It is within the arbitrator's authority to determine the preclusive effect of a prior arbitration. Matter of Falzone v. New York Central Mutual Fire Ins. Co., 15 N.Y.3d 530 (2010), aff'g, 64 A.D.3d 1149 (4th Dept. 2009).

The doctrine of collateral estoppel is a salutary one. It prevents a losing party from relitigating an issue already decided. Among the services in the prior case were an office visit of March 12, 2019 and cervical facet joint injections of March 20, 2019. The same services are at issue in the case at bar. These dates of service are close in time to those at issue herein. The underlying issue is whether Assignor had recovered such that further treatment was not medically necessary. I found that she had. That determination should likewise be applied herein.

In any event, Applicant has not submitted any medical evidence contemporaneous in time with Dr. Krishnan's IME examination of Sept. 5, 2018. It has failed to credibly rebut Dr. Krishnan's findings.

Therefore, I again find that Applicant's services post-IME cutoff are not medically necessary. I again sustain the IME cutoff defense of lack of medical necessity. Said defense overcomes Applicant's prima facie case of entitlement to No-Fault compensation. Accordingly, the within arbitration claim is denied in its entirety.

This arbitrator has not made a determination that benefits provided for under Article 51 (the No-Fault statute) of the Insurance Law are not payable based upon the assignor's lack of coverage and/or violation of a policy condition due to the actions or conduct of Assignor. As such and in accordance with the provisions of the prescribed NYS Form NF-AOB (the assignment of benefits), Applicant health provider shall not pursue payment directly from Assignor for services which were the subject of this arbitration, notwithstanding any other agreement to the contrary.

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Please note that the Modria template for New York No-Fault arbitration awards contains an unalterable preprinted entry below for the State of New York, County of _____ as the location where the award was executed. This award was executed in the State of Florida, County of Palm Beach.

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 State of Florida, County of Palm Beach

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

02/03/2021
(Dated)

Aaron Maslow

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:
2acc6d74dbef23e2db479fa9052fb80c

Electronically Signed

Your name: Aaron Maslow
Signed on: 02/03/2021