

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Spine & Pain Consultant, PLLC  
(Applicant)

- and -

American Transit Insurance Company  
(Respondent)

AAA Case No. 17-20-1180-2095

Applicant's File No. A26819

Insurer's Claim File No. 1048440-02

NAIC No. 16616

### ARBITRATION AWARD

I, Richard Kokel, 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 04/16/2021  
Declared closed by the arbitrator on 04/16/2021

Ashley Andrews-Santillo from Munawar & Hashmat LLP participated for the Applicant

Jack Hessel from American Transit Insurance Company participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,312.37**, 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 the services at issue. They also stipulated that Respondent's NF-10 denial of claim forms were timely issued, i.e., within the 30-day limitation period identified in Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1).

3. Summary of Issues in Dispute

The issue concerns the medical necessity of pain management services. The Respondent concluded that said services were not medically necessary based upon the findings reported by Dr. Roth, M.D.

4. Findings, Conclusions, and Basis Therefor

The EIP was involved in a motor vehicle accident on January 12, 2019 (the EIP, a male, was 57 years old as of the date of accident). He was, purportedly, injured in the accident and the Applicant provided the services at issue to help treat said injuries. They consisted of several office examinations and a pain management service (a cervical spine epidural steroid injection at C7-T1 administered on September 16, 2019). The Applicant conducted four examinations of the EIP. Three were billed with CPT code number 99213, and one was billed with CPT code number 99212.

The services were rendered from September 5, 2019 to April 20, 2020.

The Respondent timely denied the claim in accordance with 11 NYCRR 65-3.8. They stated that the services were not medically necessary, based on the findings of an Independent Medical Examination. This examination was conducted by Dr. Roth, M.D. on May 9, 2019. Based on Dr. Roth's reported findings, the Respondent informed the EIP and the Applicant all future benefits are being denied effective May 26, 2019. The Respondent bears "both the burden of production and the burden of persuasion with respect to the medical necessity of the treatment or testing for which payment is sought." (see Bajaj v. Progressive Ins. Co., 14 Misc 3d 1202(A) (N.Y.C. Civ. Ct. 2006).

The Respondent also raised a fee schedule defense regarding the amounts charged by the Applicant for the services at issue.

The Applicant commenced this proceeding to recover assigned first party No-Fault benefits with respect to the cost of the services at issue.

In support of their respective positions, each party submitted documentary evidence. All such evidence is contained within the Case Management system maintained by the American Arbitration Association. The below noted decision is based upon my review of this evidence and the oral argument of the representatives present at the hearing.

The evidence submitted by the Applicant included medical reports regarding the above noted examinations conducted on September 5, 2019, October 17, 2019, December 20, 2019 and April 20, 2020. Additionally, the Applicant submitted a 'rebuttal' document prepared by Dr. Alexis, M.D. that referenced a May 20, 2019 examination of the EIP. All of the foregoing examination reports identify the EIP's ongoing symptoms and positive findings.

Additionally, I note that the foregoing evidence with respect to the within EIP, the within accident, the within Applicant provider, and the Independent Medical Examination conducted by Dr. Roth (on May 9, 2-19) was previously discussed in a prior arbitration hearing. The hearing, in front of Arbitrator Balzer, was in regard to a November 4, 2019 examination service. Arbitrator Balzer found that the Respondent's stated defense could not be sustained. In her decision she stated: *It is clear that as of May 2019, approximately 4 months post accident, RK (the EIP) was still suffering from the effects of the injuries sustained in the subject MVA. RK's pain and symptoms*

required further medical care and treatment, including follow up office visits, such as the one in dispute. (see American Arbitration Association case number 17-20-1159-8118).

The doctrine of res judicata bars any claim "arising out of the same transaction or series of transactions . . . even if based upon different theories or if seeking a different remedy." (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Collateral estoppel "precludes a party from relitigating. . . an issue clearly raised in a prior action or proceeding and decided against that party" and that party had a "full and fair opportunity" to litigate the issue. (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 (1999). Herein, the issue decided by Arbitrator Balzer is identical to the material issue herein and the Respondent had a full and fair opportunity to contest this issue in this prior proceeding (see [Jeffreys v. Griffin](#), 1 NY3d 34, 769 NYS2d 184 (2003)).

I find that these principals should apply herein. To do otherwise would not be equitable or practical with respect to wasting time, energy and expense relitigating the same issues.

Based on the foregoing, the Respondent's defense has not been sustained and the Applicant's claim is thereby awarded. However, the cost billed for the examination services must be adjusted in lieu of the Respondent's fee schedule defense.

The workers' compensation fee schedule was "incorporated by reference into the Insurance Department Regulations (see 11 NYCRR 68.1 [a]), LVOV Acupuncture, P.C. v GEICO Ins. Co., 32 Misc 3d 144[A], 2011 NY Slip Op 51721[U], App Term, 2d, 11th & 13th Jud Dists, (2011) & MIA Acupuncture, P.C. v Praetorian Ins. Co., 2011 NY Slip Op 21480, App Term, Second Dept, (2011). It (the fee schedule) is a reliable source of information and I will, therefore, take notice of its contents to analyze the within circumstances (see CPLR 4511 [b] and Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co., 61 AD3d 13, 20, 2<sup>nd</sup> Dept (2009)).

The Applicant billed in excess of the permitted fees for both the CPT codes 99213 and 99212. The fee for a 99213 coded service is \$64.07 (10.99 conversion factor x 5.83 relative value). The fee for a 99212 coded service is \$50.22 (10.99 conversion factor x 4.57 relative value). These adjusted amount are awarded in addition to the billed fee for the injection service.

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
	Spine & Pain Consultant, PLLC	09/05/19 - 09/05/19	\$87.80	Awarded: \$64.07
	Spine & Pain Consultant, PLLC	09/16/19 - 09/16/19	\$1,003.88	Awarded: \$1,003.88
	Spine & Pain Consultant, PLLC	10/17/19 - 10/17/19	\$87.80	Awarded: \$64.07
	Spine & Pain Consultant, PLLC	12/30/19 - 12/30/19	\$64.07	Awarded: \$64.07
	Spine & Pain Consultant, PLLC	04/20/20 - 04/20/20	\$68.82	Awarded: \$50.22
<b>Total</b>			<b>\$1,312.37</b>	<b>Awarded: \$1,246.31</b>

B. The insurer shall also compute and pay the applicant interest set forth below. 10/05/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Interest shall be computed from October 5, 2020, the date the request for arbitration was filed with the American Arbitration Association, at a rate of 2% per month, calculated

on a pro rata basis using a 30 day month, and ending with the date of payment of the award subject to the provisions of 11 NYCRR 65-3.9(e).

C. Attorney's Fees

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

An attorney's fee of 20% shall be paid on the sum total of the awarded claim plus interest, subject to a maximum of \$1,360 (see 11 NYCRR 65-4.6(d).

- 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 New York

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

04/16/2021  
(Dated)

Richard Kokel

**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:**  
f7d6b79721bfe816b0228864fe65b77d

**Electronically Signed**

Your name: Richard Kokel  
Signed on: 04/16/2021