

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Metropolitan Surgical Services, LLC
(Applicant)

- and -

State Farm Fire & Casualty Company
(Respondent)

AAA Case No. 17-19-1118-3769

Applicant's File No. GS-768375

Insurer's Claim File No. 52-1945-P75

NAIC No. 25143

ARBITRATION AWARD

I, Maureen Callahan, 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 04/27/2021
Declared closed by the arbitrator on 04/27/2021

M Sledzinski from Law Offices Of Gabriel & Shapiro, LLC. participated in person for the Applicant

Cristina Lilawala from Bruno Gerbino & Soriano LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, \$ **3,035.78**, 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 applicant, and assignee of the EIP, a 40-year-old male, seeks reimbursement for a physician's assistant's bill for surgery performed on 6/7 18, subsequent to the MVA on 10/28/17. The claim was denied based upon false statements and material misrepresentations.

4. Findings, Conclusions, and Basis Therefor

The accident occurred on 6/10/28/17. Due to the coronavirus pandemic, the case was handled via zoom with both sides appearing and arguing their position. In addition to the oral arguments, a review of the documents contained in the electronic case folder is considered in rendering a determination on this matter. The EIP had a right knee surgery performed on 6/7/18. This claim seeks payment for the physician's assistant bill in connection with that procedure.

The medical records in the case folder include the operative report from health plus surgery center regarding the 6/7/18 procedure. Dr. Arun Rovner was assisted by Jacob Katanov, P.A., in connection with a right knee arthroscopic and partial bilateral meniscectomy.

A prima facie showing of entitlement to judgment as a matter of law is made out by submitting evidentiary proof that the prescribed statutory billing forms have been mailed and received, and that payment of No-Fault benefits was overdue. LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co., 30 A.D.3d 727, 816 N.Y.S.2d 587 (3d Dept. 2006) (claimant submitted signed return receipt cards); Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). If an insurer presents evidence substantiating a lack of medical necessity defense, the burden shifts to the applicant health services provider to then present its own evidence of medical necessity. West Tremont Med. Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A) (App Term 2d Dept 2006). If the applicant fails to present any evidence to refute respondent's prima facie showing of a lack of medical necessity for post-IME health services, the claim should be denied, as the ultimate burden of proof on the issue of medical necessity lies with the applicant. AJS Chiropractic, P.C. v. Mercury Ins. Co., 22 Misc.3d 133(A) (2d Dept 2002). See Insurance Law § 5102; Wagner v. Baird, 208 AD2d 1087 (3d Dept 1994). The burden then becomes respondents to show otherwise.

The respondent chose to verify this claim. Certainly they are entitled to do so. The No-Fault program "stresses the justifying of claims." Nyack Hosp. v. General Motors Acceptance Corp., 8 N.Y.3d 294, 300, 832 N.Y.S.2d 880, 884 (2007). The respondent called for an examination under oath of the EIP. Same was conducted on 1/25/18. An examination under oath of driver Shelisa Mitchell and passenger Christopher Savory were also conducted on this day. Respondent articulated the facts which preceded examination under oath. She demonstrates a reasonable basis for the examination. This policy was taken out in Albany 17 days prior to the accident. The vehicle was registered in the Bronx. She illustrated conflicts between the testimony of the after mentioned three people. The EIP did not know the owner of the car; all denied knowing the registered owner.

It is stipulated that the denial was timely dispatched. The denial is dated 7/18/18. The basis of the denial states that "the companies investigation finding that loss was not an accident and injured party made false statements with intent to conceal or misrepresent material facts or circumstances related to the loss in furtherance of an insurance fraud scheme." Respondent argues that there is already been a determination in this matter in favor of respondent in an award issued by arbitrator Claire Gallagher in AAA# 17 - 18 - 1105 - 8449. I have reviewed that decision. In fact, Arbitrator Gallagher did not make a

final determination with respect to a fraud. Rather, Arbitrator Gallagher notes that since a declaratory judgment is outstanding, and because respondent is seeking declaratory judgment on issues which form the basis for its defense in this case, she found it appropriate that the matter be dismissed without prejudice pending resolution of the court case "so as to avoid prolonging controversies and inviting inconsistent adjudication." *Roggio vs. Nationwide Mut. Ins. Co.*, 66N.Y.2d260, 263 (N.Y.1985).

Thus, and following the decision of arbitrator Gallagher, this case is dismissed without prejudice.

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 DISMISSED without prejudice

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of NY

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

04/30/2021
(Dated)

Maureen Callahan

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:
1d9b76a375c7910ecf2d2ca8cd988062

Electronically Signed

Your name: Maureen Callahan
Signed on: 04/30/2021