

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Concourse Chiropractic  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-20-1164-5938

Applicant's File No. NunezAnth

Insurer's Claim File No. 0498766594

NAIC No. 29688

**ARBITRATION AWARD**

I, James Hogan, 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 05/13/2021  
Declared closed by the arbitrator on 05/13/2021

Michael Tomforde from Dash Law Firm, P.C. participated in person for the Applicant

Dana Nolan from Law Offices Of Karen L. Lawrence participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,517.18**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, the Applicant amended the amount in controversy to \$858.16 to be in accordance with the fee schedule.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The EIP, a 26 year old man, was injured in a collision on 4/16/18. This claim is for chiropractic services provided to the EIP from 7/13 through 10/5/18, billed at a total of \$1,517.18. Respondent denied the Applicant claims asserting that the EIP failed to appear for IMEs.

#### 4. Findings, Conclusions, and Basis Therefor

**This decision is based upon my review of the electronic file maintained by the American Arbitration Association, and the arguments of the parties set forth in the hearing.**

##### **Applicant's submission:**

Applicant is billing for services provided to the EIP as follows:

An initial office visit billed under CPT code 99203 at \$54.74 for DOS 7/13/18.

CMT billed under CPT code 98941 at \$34.68 and an unlisted physical medicine modality billed under CPT code 97139 at \$16.70 for billing totaling \$51.38 for DOS 7/16, 7/17, 7/19, 7/23, 7/24, 7/26, 7/30, 7/31, 8/1, 8/6, 8/8, 8/10, 8/13, 8/14, 8/20, 8/21, 8/22, 8/27, 9/5, 9/13, 9/17, 9/18, 9/25, 10/9, 10/10, 10/11 and 10/15/18. (27 DOS)

A follow-up office visit billed under CPT code 99212 at \$26.42; CMT billed under CPT code 98941 at \$34.68 and an unlisted physical medicine modality billed under CPT code 97139 at \$16.70 for billing totaling \$77.80 for DOS 8/29/18.

**As per the AR-1, Applicant billed \$1,517.18; Respondent paid \$0.00, leaving an amount in dispute of \$1,517.18.**

Applicant has provided copies of progress notes from 7/16/18 through 10/15/18.

Also provided is a copy of an Initial Chiropractic Evaluation of the EIP with the Applicant dated 7/13/18.

There is a follow-up evaluation dated 8/29/18.

##### **Respondent's submission:**

Respondent's position is that the EIP was properly noticed for IMEs on 8/28 and 9/11/18. He failed to appear. As a result, all benefits were denied effective 4/16/18.

Respondent sent a letter to the Applicant on 8/20/18 referencing DOS 7/13 - 7/31/18 and billing in the amount of \$465.78. Respondent received the Applicant's billing on 8/7/18. The letter advises that all claims have been delayed pending Respondent's examination including an EUO of the EIP and other individuals involved in the subject accident. Respondent is seeking to verify the proof of claim and the particulars of the accident.

Respondent has provided a copy of a Letter of Representation which is dated 5/15/18 from the Ofshtein Law Firm, PC. This entity represents the EIP with regard to injuries sustained in the 4/16/18 motor vehicle accident.

**On 8/16/18, D&D Associates, a vendor employed by the Respondent, sent a letter to Ofshstein Law Firm, PC, with a copy being sent to the EIP. This letter advises that an orthopedic IME was scheduled for the EIP with Regina Hillsman at 3117 Buhre Ave., Bronx, NY, 10461 on 8/30/18 at 11:15 AM.**

Respondent has provided a document from Regina O. Hillsman, MD, which is dated 8/30/18. She references the EIP saying that she was present to perform an IME on the EIP at 3117 Buhre Ave., Bronx, NY on 8/30/18 at 11:15 AM. The EIP failed to appear.

**On 9/4/18, D&D Associates, sent a letter to Ofshstein Law Firm, PC, with a copy being sent to the EIP. The letter was marked FINAL NOTICE. This letter advises that an orthopedic IME was scheduled for the EIP with Regina Hillsman at 799 Morris Park Ave. Bronx, NY, 10461 on 9/13/18 at 11:45 AM.**

Respondent has provided a document from Regina O. Hillsman, MD, which is dated 9/13/18. She references the EIP and she was present to perform an IME on the EIP at 799 Morris Park Ave. Bronx, NY on 9/13/18 at 11:45 AM. The EIP failed to appear.

**Affidavit of Jennifer Forzani:** Ms. Forzani is an administrator at D&D Associates and is familiar with the ordinary business practices of the entity. The affidavit was based upon the records of the company that were kept in the regular and ordinary course of business.

D&D is in the business of arranging IMEs. It was retained by the Respondent in this matter to schedule an IME for the EIP.

She then recounts the standard practice which is followed when an IME is requested. The EIP's information is entered into the computer system. That information is provided by the insurance company. A file number is assigned. A letter scheduling the IME is generated to the EIP and/or his/her attorney. Names and addresses of other recipients to the scheduling letter are listed on the bottom of the letter. The IME scheduling letters are mailed to the address on the letters on the same day that the IME was scheduled. A copy is sent to the claimant and the claimant's attorney. Additionally, the doctor who was to conduct the IME is also notified.

Mailer pages are printed at the same time as the scheduling letters to be mailed. The mailer page contains the name and address of the intended recipient. Documents are placed in the envelope with the address visible through the window. The appropriate postage is applied. The envelope is then placed in a bin with other outgoing mail and at the end of the day the mail is taken to the post office and placed into the custody of the USPS.

D&D received notification from the doctor scheduled to conduct the IME as to whether the claimant appeared. This information is entered into the computer system.

In the instant case, on 8/16/18 a letter scheduling an orthopedic surgery IME of the EIP on 8/30/18 at 11:15 AM was sent to Ofshtein Law Firm with a copy being sent to the EIP. The EIP failed to appear.

On 9/4/18 another letter was sent to the same individuals, this time scheduling the orthopedic IME with Dr. Hillsman for 9/13/18 at 11:45 AM. The EIP failed to appear.

**On 9/21/19, Respondent issued a global NF-10 denying all claims effective 4/16/18. The basis for the denial was the IME no-show on 8/28 and 9/11/18.**

**Respondent issued NF-10s denying the Applicant's claim predicated upon the IME no-show for the following:**

DOS 7/13 - 7/31/18 and billing in the amount of \$465.78.

DOS 8/1 - 8/29/18 and billing in the amount of \$599.86.

DOS 9/5 - 9/17/18 and billing in the amount of \$154.14.

DOS 9/18 - 9/25/18 and billing in the amount of \$102.76.

DOS 10/15/18 and billing in the amount of \$51.38.

DOS 10/9 - 10/11/18 and billing in the amount of \$154.14.

I note that the Respondent has also provided scheduling letters for acupuncture/chiropractic IME with John Iozzio, DC, L.Ac. for 8/28/18 at 4:00 p.m. and 9/11/18 at 3:45 PM. Copies of the IME scheduling letters have been provided as well as letters from Dr. Iozzio dated 8/28/18 and 9/11/18.

The Respondent has provided another affidavit from Jennifer Forzani which is a mirror image of the aforementioned affidavit, with the exception that this letter refers to acupuncture/chiropractic IME's to be administered to the EIP on 8/28/18 and 9/11/18 at 4:00 p.m. and 3:45 PM, respectively. These IMEs were with Dr. Iozzio and scheduled to take place at 2114 Williamsbridge Rd., lower level, Room 110, Bronx, NY.

Dr. Iozzio has provided affidavits from Dr. Iozzio, dated 8/28/18 and 9/11/18, but neither of them is notarized.

**At the hearing:**

Applicant argued that the basis for the denials of the Applicant's billing was that the EIP failed to appear for IMEs on 8/28 and 9/11/18. These were the dates when the IMEs were scheduled with Dr. Iozzio. The affidavits by Dr. Iozzio were not notarized, therefore a nullity.

There was no denial based upon the orthopedic IME.

Respondent relied upon the documents generated by Dr. Hillsman as a basis for the denials.

**FINDINGS:**

The Applicant has established its prima facie case.

This claim is for chiropractic services provided to the EIP from 7/13 through 10/5/18, billed at a total of \$1,517.18. This amount was amended at the hearing to \$858.16.

Respondent denied the Applicant claims asserting that the EIP failed to appear for IMEs.

Respondent has provided copies of the IME scheduled letters for the orthopedic IMEs. There is also a statement from Dr. Hillsman as to the EIP's non-appearance.

There is affidavit from Jennifer Forzani of D&D Associates as to the mailing of the IME scheduling letters.

Additionally, there are IME scheduling letters for acupuncture/chiropractic IME to be administered by Dr. Iozzio. There are statements from Dr. Iozzio as to the EIP's non-appearance, but these were not notarized.

There is affidavit from Jennifer Forzani of D&D Associates as to the mailing of the IME scheduling letters.

Since the NF-10s deny the claims based upon failing to appear for IMEs on 8/28 and 9/11/18, the dates when the EIP was scheduled for IMEs with Dr. Iozzio, and his affidavits as to the EIP's no-show were not notarized, the Respondent has not demonstrated that the EIP failed to appear.

The claim is awarded, as amended.

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	Amount Amended	Status
	Concourse Chiropractic	07/13/18 - 10/05/18	\$1,517.18	\$858.16	Awarded: \$858.16
Total			\$1,517.18		Awarded: \$858.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 05/08/2020 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

I find that the date for interest to accrue is the date of the filing of the arbitration, 5/8/2020 as this is the date when the Applicant's filing was processed and notice of the arbitration sent to the Respondent. As per Insurance Regulation 65-3.9, interest is due until such amount is paid, and without demand therefor.

C. Attorney's Fees

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

The insurer shall pay the Applicant's attorney as per 11 NYCRR 65-4.6 (e). However, if the award and interest is equal to, or less than, Respondent's written offer during the conciliation process, then the attorney's fee shall be based upon 11 NYCRR 65-4.6 (b).

- 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 Suffolk

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

05/13/2021  
(Dated)

James Hogan

### **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:**

e045bb388fae55b6d61abd6230605473

### **Electronically Signed**

Your name: James Hogan  
Signed on: 05/13/2021