

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Comprehensive Medical Assist PC  
(Applicant)

- and -

State Farm Mutual Automobile Insurance  
Company  
(Respondent)

AAA Case No. 17-20-1154-3813

Applicant's File No. GM19-117669

Insurer's Claim File No. 52-9186-H42

NAIC No. 25178

### **ARBITRATION AWARD**

I, Robyn McAllister, 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

1. Hearing(s) held on 05/11/2021  
Declared closed by the arbitrator on 05/11/2021

Koenig Pierre, Esq. from Law Offices of Gabriel & Moroff, P.C. participated for the Applicant

Michael Philippou, Esq. from Rubin, Fiorella, Friedman & Mercante LLP participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 866.38**, 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

Whether Respondent properly denied Applicant's claim for assisting in the performance of right knee surgery for Assignor (JT), a 64 year-old male passenger, in connection with treatment of injuries allegedly sustained in a motor vehicle accident on July 11, 2019, based on Respondent's assertion that this was a staged loss.

4. Findings, Conclusions, and Basis Therefor

Applicant sought reimbursement in the amount of \$866.38 for assisting in the performance of right knee surgery on September 16, 2019 for Assignor (JT), a 64 year-old male passenger, in connection with treatment of injuries allegedly sustained in a motor vehicle accident on July 11, 2019. Respondent denied the claim predicated on its assertion that this was a staged loss.

This decision is based on the oral arguments of counsel at the hearing and the documents submitted. I have reviewed the documents contained in the ADR Center as of the date of this award. At the hearing, Respondent argued that it properly denied Applicant's claim since the motor vehicle accident was a staged loss. I agree.

The issue of whether the accident was a staged loss previously was addressed by Arbitrator Connor in *Andalella Chiropractic PC v. State Farm Mutual Automobile Insurance Company*, 17-19-1142-5904. In that case, the Arbitrator concluded that Respondent established its defense that the accident was staged. Likewise, in the instant case, I concur.

In the above-referenced case, Arbitrator Connor discussed the evidence at length and stated as follows:

*In support of its defense, Respondent argued that the EUO transcript reveals a number of inconsistent statements by the Assignor, Galison Ludovic, the driver of the vehicle, and Sade Etienne, the other passenger in the vehicle at the time of the collision.*

*The Assignor testified that on the date of the collision, Mr. Ludovic was already at the apartment in Bedford Stuyvesant with the Ms. Etienne and Gary. Mr. Ludovic was not asleep; he was talking with Ms. Etienne, who Mr. Toussaint believed was Mr. Ludovic's girlfriend; they appeared to be very familiar with each other. The Assignor testified that Mr. Ludovic left the vehicle at the scene of the collision. A third party met the three occupants of the vehicle and took them to their respective homes. The Assignor was the first person to be taken to his house. He stated that there was no GPS system in use; Mr. Ludovic knew how to get to Canarsie and did not need directions. The Assignor further testified that he coincidentally began attending the same treatment facility as Ms. Etienne and Mr. Ludovic without knowing that they were being treated there. He had never been treated at the facility before.*

*Ms. Etienne testified that on the date of the collision she was visiting Gary alone in his apartment in Bedford Stuyvesant. She asked Gary to get someone to take her home to Canarsie. He told her that his son, Galison Ludovic, would take her. She then went downstairs to a car where Mr. Ludovic and the Assignor were already waiting for her. After the collision, the three occupants continued to Canarsie in the insured vehicle; she*

*was the first person to be taken to her house. When asked why her driver's license lists her address as the same address as the Mr. Ludovic and his father, Ms. Etienne said that her mother lives there and that she occasionally goes to the apartment to see her. She does not know Mr. Ludovic; she is Gary's friend. She also stated that Mr. Ludovic was not using the GPS while driving the vehicle.*

*Galison Ludovic, the driver of the vehicle, testified that on the date of the accident, he arrived home from school and found the Assignor and Ms. Etienne visiting his father, Gary. Mr. Ludovic stated that he and his father lived alone at the address. The Assignor and Ms. Etienne are his father's friends; he is not a friend of theirs. Mr. Ludovic stated that he was taking a nap when his father awakened him and asked him to take the Assignor and Ms. Etienne from his home in Bedford Stuyvesant to their homes in Canarsie. Mr. Ludovic gave a number of contradictory statements about what occurred after the collision. First, he testified that Gary called an Uber car to take them from the scene of the collision. He also stated that another friend took them to Canarsie. Mr. Ludovic then testified that the three of them drove back in the insured vehicle to the Bedford Stuyvesant apartment. Mr. Ludovic stated that he was not familiar with Canarsie and was using a GPS system for directions. The day after the collision, his father, Gary, and Gary's girlfriend drove around with him looking for a medical facility to provide him with treatment for his injuries. They happened upon the provider, which is located approximately 35 miles away from their home. The following day, he recommended the facility to the Ms. Etienne after she called him to complain of experiencing pain.*

*Upon careful review, I find in favor of Respondent. The Assignor's testimony was simply not credible. He was evasive, vague and inconsistent. The driver and the other passenger also provided contradictory statements about the circumstances surrounding the collision, their relationship to each other, and how they obtained medical treatment. Accordingly, I find that Respondent has sustained its burden of proof that the collision of May 30, 2019 was a staged event for which there is no coverage.*

I was not persuaded by Applicant's assertion at the hearing that the EUO transcript was unsworn and there was no proof it was mailed to Assignor. Applicant conceded there was proof of mailing of the transcript to Assignor's attorney. Likewise, I was not persuaded by Applicant's assertion that the EUO testimony, alone, was insufficient without an SIU investigator's affidavit.

I was persuaded by Arbitrator Connors discussion of the facts and analysis and for the reasons noted above reach the same conclusion. I find that the circumstantial evidence presented by Respondent, when taken as a whole, was sufficient to establish Respondent's defense of lack of coverage by a preponderance of the evidence. *See V.S. Medical Services, P.C. v. Allstate Ins. Co.*, 11 Misc.3d 334 (Civ. Ct., Kings Co. 2006), *aff'd*, 25 Misc.3d 39 (App. Term 2d, 11<sup>th</sup> & 13<sup>th</sup> Dists. 2009).

Inasmuch as the collision was a deliberate event it was not covered under Respondent's policy of insurance. *See Metro Medical Diagnostics v. Eagle Insurance Co.*, 741 N.Y.S.2d 284 (2d Dept. 2002).

Accordingly, Applicant's claim is denied in its entirety.

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 Nassau

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

05/17/2021

(Dated)

Robyn McAllister

**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:**  
8b23d7fe5ead98aee7277942cd9a72b8

**Electronically Signed**

Your name: Robyn McAllister  
Signed on: 05/17/2021