

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Solomon Halioua MD
(Applicant)

- and -

American Transit Insurance Company
(Respondent)

AAA Case No. 17-21-1195-4891
Applicant's File No. HALI-AMT-BXNY-002
Insurer's Claim File No. 1085376-02
NAIC No. 16616

ARBITRATION AWARD

I, Melissa Melis, 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: patient

1. Hearing(s) held on 09/03/2021
Declared closed by the arbitrator on 09/03/2021

David Quinones, Esq. from Callagy Law, PC participated for the Applicant

Erisa Ahmedi, Esq. from American Transit Insurance Company participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 724.57**, 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 provided the patient with a lumbar spine epidural steroid injection on October 14, 2020 and a follow up examination on December 22, 2020. The claim of payment for the lumbar spine epidural steroid injection was denied based on a peer review by Dr. Peter Chiu on January 28, 2021 and the follow up examination was denied based on the results of an independent medical examination conducted by Dr. Michael Russ on December 3, 2020. The issue is whether or not the Applicant is entitled to No-fault benefits.

4. Findings, Conclusions, and Basis Therefor

The patient, a 48 year old male passenger was involved in an automobile collision on June 16, 2020. The patient was examined, diagnosed and prescribed a treatment plan. The treatment plan included lumbar spine epidural steroid injections and examinations.

The Applicant provided the patient with a lumbar spine epidural steroid injection on October 14, 2020. The Applicant submitted a bill to the Respondent for payment. According to the denial of benefits form dated February 5, 2021, the bill was received on November 2, 2020, delayed pending an EUO which was conducted on January 5, 2021.

11 NYCRR § 65-3.8 provides:

"Payment or denial of claim (30-day rule).

(a) (1) No-fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim, which shall include verification of all of the relevant information requested pursuant to section 65-3.5 of this Subpart. In the case of an examination under oath or a medical examination, the verification is deemed to have been received by the insurer on the day the examination was performed. "

The evidence shows that the EUO was completed on January 5, 2021. The Respondent had 30 days from January 5, 2021 to pay or deny the claim. The denial of benefits form is dated February 5, 2021. This is one day late. "Where an insurer fails to pay or deny a claim within the requisite 30 days under the statute and regulations following its receipt of the proof of claim, the insurer is subject to 'substantial consequences,' namely, preclusion 'from asserting a defense against payment of the claim' (Fair Price, 10 NY3d at 563 [internal quotation marks omitted]). The only exception to preclusion recognized by this Court arises where an insurer raises lack of coverage as a defense (see *id.*; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d at 318; *Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). This Court has recognized that preclusion may require an insurer to pay a no-fault claim it might not have had to honor if it had timely denied the claim (see *Presbyterian Hosp. In City of N.Y. v. Maryland Cas. Co.*, 90 N.Y.2d 274, 279-280, 660 N.Y.S.2d 536, 683 N.E.2d 1). Therefore, I find based on the evidence that the Applicant is entitled to payment for the lumbar spine epidural steroid injection provided to the patient on October 14, 2020.

The claim of payment for the follow up examination conducted by the Applicant on December 22, 2020 was denied payment based on the independent medical examination conducted by Dr. Michael Russ on December 3, 2020. On the date of the examination, the patient complained of lower back pain and left shoulder pain. The examination revealed resolved Qi and blood stagnation, no tenderness upon palpation of the cervical spine and lumbar spine, no muscle spasms, full and normal range of motion of the cervical and lumbar spine, negative straight leg raising test, equal and bilateral deep tendon reflexes, mild tenderness of the left shoulder, full and normal range of motion of the left shoulder and negative impingement sign. The diagnosis was resolved sprain/strain of the cervical and lumbar spine and resolved sprain of the left shoulder. Dr. Russ stated that the patient was not in need of any further physical therapy,

acupuncture, diagnostic testing, household help, medical supplies or special transportation.

The patient was examined on December 22, 2020 by Dr. Solomon Halioua. On that date, the patient stated that he received some relief from the prior lumbar epidural steroid injection but his symptoms have returned. The patient complained of cervical spine pain radiating down the left upper extremity and left shoulder pain. The examination revealed mild tenderness overlying bilateral facets of L3 through S1, negative straight leg raising test, limited power testing in the left deltoid and positive Spurling sign and moderate tenderness overlying bilateral facets of C3 through C6. The diagnosis was cervical radiculitis with possible radiculopathy. Dr. Halioua recommended a cervical spine epidural injection with epidurography.

I find based on the evidence that the Respondent has failed to set forth the medical rationale and factual basis for denying payment for the follow up examination conducted on December 22, 2020. The denial was based on the results of the independent medical examination conducted by Dr. Russ on December 3, 2020. Dr. Russ found that the patient's condition was fully resolved and the patient was not in need of any further treatment. However, the patient was re-evaluated by the Applicant on December 22, 2020. He found that the patient was still complaining of pains and in need of further treatments. I find based on the evidence that the denial of payment for the follow up examination conducted on December 22, 2020 was not proper or substantiated.

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
	Solomon Halioua MD	10/14/20 - 10/14/20	\$597.16	Awarded: \$597.16
	Solomon Halioua MD	12/22/20 - 12/22/20	\$127.41	Awarded: \$127.41
Total			\$724.57	Awarded: \$724.57

- B. The insurer shall also compute and pay the applicant interest set forth below. 02/26/2021 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

11 NYCRR 65-3.9(a) provides, in pertinent part, "All overdue mandatory and additional personal injury protection benefits due an applicant or assignee shall bear interest at a rate of two percent per month, calculated on a pro rata basis using a 30 day month..." Since this claim was timely denied but the action was not instituted until 30 days after the date of the denial, interest is due at a rate of 2% per month, simple from the date after the date of filing of this arbitration until the date of payment of this award.

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 an attorney's fee in accordance with 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 Suffolk

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

09/26/2021
(Dated)

Melissa Melis

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:
86bac070b7b958d262f7185827e74afc

Electronically Signed

Your name: Melissa Melis
Signed on: 09/26/2021